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Current Topics.

Inclusion of Documents in Cases for the Privy Council.

LORD PHILLIMORE made some important observations with regard to the preparation of cases for the Privy Council in the course of the hearing of a Bengal appeal: *The Times*, 22nd January, 1927. In this case, there had been included in the printed case, a great many documents, relating to accounts, the inclusion of which had been rendered unnecessary by reason of the fact that the accounts had been agreed between the parties, as also the amounts alleged to be due to the plaintiff as a creditor. It was alleged that it was difficult to exclude such unnecessary documents, where the other party to the appeal resisted their exclusion. The practice in the Calcutta High Court, and the same would appear to apply to the other Indian High Courts, is to apply to the Registrar of the local high court to determine whether a document should be included or excluded where there is a dispute or any doubt as to the matter.

In any case, as the Privy Council pointed out, it is the duty of the solicitor acting in this country, for a party to the appeal, to inspect the necessary documents, and to see that no unnecessary document is included in the printed case. Where the solicitor feels any doubt as to the documents to be included or excluded, he should, as the Privy Council again pointed out, take the advice of counsel in the matter, a fee, in respect of such advice, being allowable on taxation.

The Betting Duty.

AN INTERESTING problem was thrown into relief upon the hearing of a recent summons at Bow Street. The defendant was charged with carrying on business as a bookmaker without having a certificate, and also with accepting ready-money bets without issuing revenue tickets. It was submitted in his defence, that ss. 15-18 of the Finance Act, 1926, were not passed to enable revenue to be raised on illegal betting, and that he could not be properly convicted for not paying the betting duty. The magistrate said that the problem was not devoid of a little difficulty and a little interest, and that he would be prepared to state a case. The problem seems to have two aspects: (*a*) Is betting duty payable in respect of illegal *ready money* bets? (*b*) Is betting duty payable by an uncertificated bookmaker? The first question might at first sight seem to be answered by the *ipsa verba* of s. 15 (2)—"Nothing in this Part of this Act shall operate so as to render lawful any betting in any manner or place in which it is at the commencement of this Part of this Act unlawful, or so as to authorise the writing, printing, publication or sending of any notice, circular or advertisement which is at that time unlawful." And, even on *a priori* grounds, one would be reluctant to come to the conclusion that our Legislature intended to regard a criminal transaction as a proper source of revenue. It will be remembered that when the taxation of betting was first advocated, its opponents at once pointed to the anomaly of taxing transactions which our courts regard as contrary to public policy and visit with the sanction of nullity. *A fortiori* that argument would have been strengthened were it known that transactions were to be taxed which were not only contrary to public policy but actually criminal. But it must not be overlooked that the Privy Council in *Minister of Finance* v. *Smith*, 1927, A.C. 193, advised (*per* Lord HALDANE, at p. 198) that "they must not be taken to assent to any suggestion . . . that Income Tax Acts are necessarily restricted in their application to *lawful businesses only*." The obvious implication made was that the Privy Council saw no legal objection to the taxing of an illegal business. And what of the second aspect of the problem? Such application, though logically possible, is prevented by the provisions of the Act. By s. 15, duty is payable "on every bet made with a *bookmaker*," and, by s. 18, a *bookmaker* is defined as "*any* person who . . . carries on the business of receiving or negotiating bets, or who in any manner holds himself out or permits himself to be held out . . . as a person who receives or negotiates bets." The definition makes no mention of the "bookmaker's certificate," and it is reasonable to hold that s. 15 applies to certificated and uncertificated bookmakers alike, and that the absence of the certificate does not prevent the collection of the duty. This conclusion, a departure from a high *a priori* road, is strengthened by the provision of s. 17—"if any person . . . carries on business as a bookmaker without having in force a proper certificate, . . . he shall (without prejudice to his liability . . . *to pay any sum in respect of duty under this Part of this Act*) be liable, in respect of each offence, to an excise penalty of one hundred pounds."

Rating and Valuation Act, 1925. Effect of Repeals.

A COMPLICATED point arises under the Rating and Valuation Act, 1925, which repeals portions of the Poor Rate Assessment and Collection Act, 1869, and other enactments which applied to London as well as to the rest of the country Section 70 (1) of the new Act says it shall not extend to the Administrative County of London, but the repeal section, 69, has no saving for London. The question arises whether such enactments are repealed entirely or not. On the one hand, it is argued that the statute not extending to London, the repeals effected by it do not extend to London, and the

absence of the usual saving must be *per incuriam;* the enactments must be treated as unrepealed, so far as they apply to the excepted area. On the other, it is argued that a repeal is a repeal, and if no saving is inserted, the repeal is absolute. The doubt might be an exceedingly inconvenient one, but it can be overcome. By s. 69 (7) that section "shall come into operation on such date as may be fixed by the Minister, and the Minister may fix different dates for different purposes and in relation to different areas." Presumably he will never fix any date for the area comprised in the Administrative County of London, and the Acts will remain unrepealed so far as that area is concerned. It is a roundabout method of legislation which, as the recent case of *R.* v. *Kynaston* shows, can lead to trouble. There, it will be remembered, an accused person was convicted under a statute not yet been brought into force "by a hypothetical and contingent Order in Council."

Contributions by Trade Unions to the Trade Union Congress.

THE CASE of *Forster* v. *National Amalgamated Union of Shop Assistants*, judgment in which was given on the 21st January (71 SOL. J., p. 105), raised an interesting question of trade union law. The plaintiff, a member of the defendant trade union, claimed an injunction to restrain the defendants from applying any of the union's general funds in the furtherance of the political objects mentioned in s. 3 (3) of the Trade Union Act, 1913. The Act of 1913 gives a general right to a trade union to include political purposes among its objects; but in the case of the particular objects specified in s. 3 (3) of the Act, payments in furtherance of the same, out of the funds of a trade union, can only be made on certain conditions. Section 3 (3) includes, *inter alia*, expenditure upon election expenses, or for the maintenance of a Member of Parliament, or the holding of political meetings or the distribution of political literature. The conditions upon which such expenditure can be made are set out in s. 3 (1). There must be (*a*) a resolution, passed upon a ballot by the members of the union, approving of the furtherance of such objects being an object of the union, and (*b*) rules (approved by the Registrar of Friendly Societies) must be in force, providing for payments in furtherance of the same being made out of a separate fund (referred to as the "political fund") and for the exemption from liability to contribute to such fund of any member who gives in the required form a notice of objection to make such contribution.

Both of the above conditions had been complied with by the defendants; but the plaintiff contended that by making contributions out of the union's general funds, instead of out of the political fund, to the Trade Union Congress—a body actively engaged on political propaganda—the defendants were disregarding the terms of the section. The pleading was framed upon the footing that there had been a breach of the statute and not merely of the rules. But the learned judge pointed out that the conditions precedent to the application of the funds of the union for the purposes specified in s. 3 (1) had been complied with, and that if there was any ground of complaint it was that the rules had not been observed and not that the statute had been broken. The statute does not contain a direction that the rules in question must be observed. But in the case of any breach, s. 3 (2) provides that a person aggrieved may apply to the Registrar, who if he considers that a breach has been committed, may make such order for remedying the same as he thinks just. In 1925 the plaintiff complained to the Registrar, who, after going fully into the matter, refused to make any order, being of opinion that no breach of the rule had been proved.

The court refused an application made at the trial on behalf of the plaintiff to amend the pleadings by claiming alternatively relief upon the footing that there had been a breach of the rules. The learned judge pointed out, moreover, that even if the pleadings had been originally framed in the form in which it was desired by amendment to place them, the plaintiff was faced with the difficulty that by s. 3 (2) the Legislature had provided the special procedure of an application to the Registrar, and that this appeared to be the only procedure which in such a case could be adopted. In the present case it had been tried already, and the plaintiff had failed.

Furtum Usus.

A NOTABLE point of difference between the criminal law of England and Scotland is well exemplified by the case of *Strathern* v. *Seaforth* reported in the latest issue of the Scottish Reports—1926, S.C. (J.) 100. By the Larceny Act, 1916, "a person steals who, without the consent of the owner, fraudulently and without a claim of right made in good faith, takes and carries away anything capable of being stolen with intent, at the time of such taking, permanently to deprive the owner thereof." Under this definition and the common law which it reproduces, the intent to deprive the owner permanently of the thing taken is an essential ingredient of the offence in England. Thus, according to an old illustration, if a man takes his neighbour's plough that is left in the field, and uses it upon his own land, and then returns it, this may be a trespass but is not a larceny. Nowadays the borrowing without permission of a neighbour's plough is not, we imagine, a common occurrence, but as most of us are aware, the borrowing of someone else's motor car for what is popularly known as "a joy-ride" is painfully frequent, and if the person who indulges in this pastime can persuade the jury before whom he may be arraigned, as often he appears to be able to do, that he had no intent, when he "borrowed" the car, permanently to deprive the owner thereof, he can leave the court a free, although not perhaps a very honourable, man. *Strathern* v. *Seaforth* shows that Scottish law does not adopt the same lenient attitude towards this practice. In that case the charge against the accused person was that he did, on a certain date, "clandestinely take possession of a motor car, the property of M. R. . . . you well knowing that you had not received permission from, and would not have obtained permission from, the said M. R. to your so doing, and did drive and use the said motor car in the streets of the City of Glasgow . . ." The sheriff substitute, before whom the accused person was charged, without going into the facts, dismissed the complaint as disclosing no offence known to the law of Scotland, but stated a case for the High Court of Justiciary on the question whether he was right in so deciding. The Appellate Court disagreed with the learned sheriff substitute, and held that a relevant complaint had been stated, with the consequence that an investigation into the facts would be necessary, all defences being open to the accused person. In giving judgment on the question of law, the Lord Justice-Clerk, after stating that in his view the circumstances alleged in the complaint were sufficient, if proved and unexplained, to constitute an offence, said that "the matter may be tested by considering what the contention for the respondent involves. It plainly involves that a motor car, or for that matter any other article, may be taken from its owner, and may be retained for an indefinite time by the person who abstracts it and who may make a profit out of the adventure, but that if he intends ultimately to return it, no offence against the law of Scotland has been committed. I venture to think that, if that were so, in these days when one is familiar with the circumstances in which motor cars are openly parked in the public street, the result would be not only lamentable but absurd. I am satisfied that our common law is not so powerless as to be unable to afford a remedy in circumstances such as these." The other judges were equally clear that a relevant complaint had been stated. In view of this decision—one which shows that Scots law has adopted the *furtum usus* of Rome—English motor car owners may well feel inclined to adapt the words of STERNE: "They order this matter better in Scotland."

The Defence of Common Employment

and the Employers' Power to Delegate Duty of Supplying Proper Appliances.

THE decision of FINLAY, J., in *Laubach* v. *Co-optimists Entertainment Syndicate Limited and Chester*, 43 T.L.R. 30, raises an interesting point in connexion with the defence of common employment available to an employer against an employee. Apart from statutory limitations thereto, it is a principle of law that a master is not liable to his servant for injury suffered by the latter through the negligence of a fellow servant, engaged in a common employment with him. In order that the master may avail himself of this defence it is important to observe that not only must the servant who is injured and the servant causing the injury be fellow servants in the employ of the same master, but they must also both be engaged in a common employment.

As to the tests to be applied in determining whether the employment is common, reference may be made to the dicta of BLACKBURN, J., in *Morgan* v. *Vale of Neath Railway Company*, 1864, 5 B. & S., at p. 580. "It is necessary," said the learned judge, "that the employment must be common in this sense, that the safety of the one servant must in the ordinary and natural course of things depend on the care and skill of the others. This includes almost, if not every, case in which the servants are employed to do joint work, but I do not think it is limited to such cases. There are many cases where the immediate object on which the one servant is employed is very dissimilar from that on which the other is employed, and yet the risk of injury from the negligence of the one is so much a natural and necessary consequence of the employment which the other accepts, that it must be included in the risks which are to be considered in his wages." Again, THESIGER, L.J., explained the doctrine in *Charles* v. *Taylor*, 1878, 3 C.P.D. at p. 498, as follows: "It has been urged that the employment is 'common' within the meaning of the rule exempting employers only when the immediate object of the work in which the servants are engaged is the same; but I think that this argument is answered by the principle laid down in *Morgan* v. *Vale of Neath Railway Company*, *supra*, and it follows from this case that where there is one common general object, in attaining which a servant is exposed to risk, he is not entitled to sue the master if he is injured by the negligence of another servant while furthering the same object."

The doctrine of common employment, does not go so far, however, as to exempt the master from responsibility, even in cases where he has been personally negligent, and negligence will be imputed to him, if he has not exercised reasonable care in the retention of the servant in question, through whose direct negligence, the injury has been caused. Reference on this point may be made to the judgment of JERVIS, C.J., in *Tarrant* v. *Webb*, 1856, 18 C.B., at p. 804; where the learned C.J., said: "The rule is now well established that no action lies against the master for the consequences to a servant of the mere negligence of his fellow. That however, does not negative liability in every case. The master may be responsible where he is personally guilty of negligence; but certainly not where he does his best to get competent persons."

In *Laubach's Case*, *supra*, the facts were shortly as follows: The plaintiff was the member of the orchestra of a theatre, and was injured by a club which slipped out of the hands of one of the performers on the stage and struck him. It appeared that the performer in question had complained to the stage manager that the club was too heavy, but nothing had been done in the matter. The jury found that the first named defendants who were the employers of the plaintiff and the second defendant as well as the stage manager, were not guilty of negligence in supplying the club or in appointing the stage manager to do the work he was employed to do, but they found that both the stage manager and the performer had been guilty of negligence. On these facts the question which Mr. Justice FINLAY was called upon to determine, was whether the first defendants, i.e., the employers, were liable to the plaintiff for the negligence of his fellow employee.

Although the doctrine of common employment discharged the employer from liability in respect of the negligence of the performer who allowed the club to slip out of his hands, the plaintiff contended that the employers were liable in respect of the negligence of the stage manager, in failing to supply proper clubs for the use of the performer.

Is it to be said therefore, that, where the negligence of the employee is in respect of the supply of appliances or machinery or plant or materials, the defence of common employment is not open to the employer.

In the Scotch case of *Wilson* v. *Merry*, 1868, L.R. 1 H.L. Sc. 326, a miner was killed by an explosion in a mine, which occurred in the following circumstances: The mine in question had four seams, one of which had been worked out, and another on which operations were about to be commenced. In order to open this seam a scaffold and a platform had been erected, and it appeared from the evidence that the erection of the platform had interrupted the current or circulation of air in the pit, as a result of which there was an accumulation of fire-damp, which in fact caused the explosion. No negligence of any kind was imputed to the employers, who had taken due care in selecting their employees and in providing them with all necessary materials and resources for doing their work in the best manner. The Lord Chancellor thus enunciated the principle of law to be applied to the facts of the case: "What the master is, in my opinion, bound to his servant to do, in the event of his not personally superintending and directing the work, is to select proper and competent persons to do so, and to furnish them with adequate materials and resources for that work. When he has done this, he has, in my opinion done all that he is bound to do. And, if the persons so selected are guilty of negligence, that is not the negligence of the master" (*ib.*, at p. 332). Again, Lord COLONSAY said (*ib.*, at p. 344): "I think there are duties incumbent on masters with reference to the safety of labourers in mines and factories, on the fulfilment of which the labourers are entitled to rely, and for the failure in which the master may be responsible. A total neglect to provide any system of ventilation for the mine may be of that character. Culpable negligence in supervision, if the master takes the supervision on himself—or where he devolves it on others, the heedless selection of unskilful or incompetent persons for the duty, or the failure to provide or supply the means of providing proper machinery or materials—may furnish grounds of liability; and there may be other duties varying according to the nature of the employment, wherein, if the master fails, he may be responsible."

Reference again may be made to the *dicta* of Lord HERSCHELL in *Smith* v. *Baker*, 1891, A.C., at p. 362, although the principle involved in that case was the principle of *volenti non fit injuria*. Thus Lord HERSCHELL says: "It is quite clear that the contract between employer and employed involves on the part of the former the duty of taking reasonable care to provide proper appliances and to maintain them in a proper condition . . ." (cf. also *Williams* v. *Birmingham Battery & Metal Co.*, 1899, 2 K.B., at pp. 342, 343).

The case of *Wilson* v. *Merry* seems to indicate that the employer is entitled to delegate certain duties so as to be relieved from liability in cases where he can show that he has used due care in selecting the person or persons to whom this duty was delegated, and that the injury has been entirely due to the negligence of the person or persons to whom the duty was delegated.

The cases of *Cribb* v. *Kynoch Limited*, 1907, 2 K.B. 548, and *Young* v. *Hoffman Manufacturing Co. Ltd.*, *ib.* p. 646, throw

further light on this question. Both these cases turn on the duty of the employer to give the employee proper instructions and warning, where the work on which the employee is engaged is of a dangerous character. In both, the duty was delegated by the employer, and in both the delegates had been guilty of negligence in failing to give the employee due warning and instructions. It was held by the court in *Young's Case* (in the Court of Appeal) that a master could not be liable in such circumstances.

These cases do not appear to have expressly decided whether a master is similarly entitled to delegate his duty to supply proper appliances. The Privy Council case of *The Toronto Power Company Ltd.*, v. *Paskwan*, 1915, A.C. 731, is however a direct decision thereon. There the husband of the plaintiff had been killed by the falling of a block from a travelling crane used in the appellant's power house. The jury found that the accident had been caused through the negligence of the master mechanic of the appellants, in failing to install proper safety appliances and to employ a competent signalman. It was held that the employers were liable. The grounds of that decision are to be found in the following passage from the judgment of Sir ARTHUR CHANNELL, *ib.*, at p. 738: "It is necessary in each case," said the learned judge, "to consider the particular duty omitted, and the providing proper plant, as distinguished from its subsequent care, is especially within the province of the master rather than of his servants." This case therefore decises that the duty towards an employee to provide proper plant, is a duty particularly within the province of the master and is one that cannot be delegated by him.

Although Mr. Justice FINLAY did not disapprove of this decision in *Laubach's Case*, he did not however apply it, holding that in the circumstances the duty of providing proper clubs for the use of the performer was one that might be delegated by the employer. The reason for the refusal of the learned judge in *Laubach's Case* to apply—or perhaps we should say, to extend—the principle of *Paskwan's Case*, *supra*, may best be summed up in his own words. There the learned judge said: "My impression is that it is to some extent a question of degree. I think there may be cases as, for instance, in the fitting up of a mine or a great factory, where it would be correct to arrive at the same conclusion as in the *Toronto Power Case*, *supra*. But it is necessary to consider what this case is. This is a case of the ordinary running of a theatre. It is merely the case of the supplying of the articles which have led to an unfortunate accident, and it seems to me that it would be doing violence to common sense to say that there is a rule of law which requires that one should say that an employer not guilty of any negligence himself is nevertheless to be held liable, because he was bound to supply plant. I do not think that there is a rule established to the extent suggested."

Some Points of Highway Law.

X.

BY ALEXANDER MACMORRAN, M.A., K.C.

(*Continued from p.* 70.)

It is beyond the scope of these notes to enumerate or refer to all the cases which have been decided with reference to acts amounting to nuisances. But, as already stated, they include all acts done without lawful authority which may render the highway less safe or commodious for the public passage. There are what may be called minor nuisances in respect of which a summary remedy is provided by the Highway Acts, the Town Police Clauses Act, and similar statutes. Of the minor nuisances in question reference may be made to one as being of some importance, and it arises under the Highway Act, 1835, s. 78, which provides that if the driver of any vehicle or of any horses or other beasts meeting any other vehicle or beasts shall not keep his vehicle on the left or near side of the road he shall be liable to a penalty. The same section provides that if any person shall wilfully prevent any other person from passing him or shall not keep his own vehicle on the left or near side of the road he shall be liable to a penalty. The effect of the section just quoted is to recognise what is known as the rule of the road. But this rule is often misunderstood. In the recent case of *Nuttall* v. *Pickering*, 1913, 1 K.B. 14, a waggon driven by the appellant was so much beyond the centre of the road that there was no room for a motor car which approached from behind to pass the waggon on the off side. The appellant signalled to the driver of the motor car to pass him on his near side, and it did so. The motor car was the only other vehicle on the road at the time, and its driver was not inconvenienced or delayed by the action of the appellant. It was held that the appellant had not committed an offence under the section already mentioned. In the course of his judgment, CHANNELL, J., said: "Where there is no other traffic on the road it is not an offence for the driver of a vehicle to be in the middle or the off side of the road, and in my opinion it is equally no offence if the only other vehicle on the road is asked and consents to pass on the wrong side."

Reference has already been made to the legal remedies for nuisance. There is, however, another remedy which calls for notice. It is the remedy by way of abatement. Anyone who is actually obstructed in the exercise of his right of passing along a highway has, by the common law, a right to abate the obstruction by removing it in order to pass. But this is only justifiable where necessary to the exercise of the right. If it is possible to avoid the nuisance by taking any other course with reasonable convenience (for example, if there is sufficient room to pass) he cannot justify abating the obstruction. The leading case on this subject is *Dimes* v. *Petley*, 15 Q.B. 276. In the course of his judgment in that case Lord CAMPBELL, C.J., said that "if there be a nuisance in the public highway a private individual cannot, of his own authority, abate it unless it does him a special injury and he can only interfere with it as far as is necessary to exercise his right of passing along the highway, and without considering whether he must show that the abatement of the nuisance was absolutely necessary to enable him to pass, we clearly think he cannot justify doing any damage to the property of the person who has improperly placed the nuisance on the highway if, avoiding it, he might have passed on at reasonable convenience." In this connexion reference may be made to the case of *Campbell Davys* v. *Lloyd*, 1901, 2 Ch. 518. It was there held that there was a broad difference between removing an obstruction wrongfully placed in a highway and making good by a permanent structure the result of mere non-feasance on the part of those charged with the duty of repairing, and that therefore a person who is merely entitled as one of the public to use a bridge carrying a highway over a river is not justified in entering on another person's land and re-erecting the bridge which has been allowed to fall into a state of decay. An operation of this nature cannot properly fall under the term "abatement," even if the right to abate can be said to exist at all in the case of a nuisance arising from mere non-feasance. In the course of the judgments of the Court of Appeal all the authorities are enumerated and reviewed.

Hitherto the nuisances which have been referred to have been for the most part actual obstructions placed in or upon the highway. They may, however, be a nuisance to a highway which consists in the manner in which the highway is used. In the case of *Rex* v. *Mathias*, 2 F. & F. 570, an attempt was made to prohibit the use on a public footway of a perambulator. It was argued that the use of such a way by a vehicle of any description, such as a hand-cart, wheelbarrow, bath-chair or perambulator, was not authorised by the right of passage along the footway, but in the course of his summing up to the jury, BYLES, J., said: "There might be many things on a footway which ought not to be there, but not being nuisances interfering

with the convenient use of the way by passengers, one of the public would have no right to remove. If you should think that this perambulator ought not to have been there but that it did not amount to a nuisance to the way, the defendant, as one of the public, had no right to remove it. But, next, he is the owner of the soil and, as such, has a larger right than one of the public merely would have; or as owner of the soil of the footway he had a right to remove not only nuisances to the way but anything thereon the presence of which was not justified by the nature of the easement, the easement in the case being a public right of footway." And the direction of the learned judge to the jury was that the owner of the soil might remove anything that encumbered his close, except such things as are usual accompaniments of a large class of foot passengers, being so small and light as neither to be a nuisance to other passengers nor injurious to the soil. Though this case was only decided at *nisi prius* it is generally regarded as the leading authority on the subject with which it deals.

(To be continued.)

A Master's Liability

for Wrongful Acts of his Servant—Its Wide Extent.

[By a Correspondent.]

The risks to which an employer is liable in respect of acts committed by his servant is strikingly illustrated by the recent case of *Poland* v. *John Parr & Sons*, 1927, 1 K.B. 236. The defendants, John Parr and Henry Parr, his son, are cartage contractors in Liverpool, and on the occasion in question Henry Parr was conveying in a wagon fifty bags of sugar. He had two horses, but at the bottom of Netley Street, Hall, a carter in the defendants' employment, brought a third horse, which was required to draw the wagon up Sleeper's Hill. The third horse was harnessed to the wagon, and Henry Parr proceeded up the hill, leading the middle horse by the head and the front horse by a side rein, the wagon and horses being in his sole control.

After harnessing the horse, Hall started to go home to have his dinner, and as he went he walked near the wagon as it was going in the direction of his home. About twenty minutes later, the wagon was proceeding along Walton Lane, Hall still following close behind. The plaintiff (a boy of twelve) with two other boys, having just left a neighbouring school, was walking home, in the same direction as the wagon along Walton Lane. The wagon was being driven at a walking pace with its near wheels close to the edging stones of a tramway which runs along and is raised slightly above the level of the lane. There was no footpath on the near side, but the tramway forms a sort of kerb. Hall noticed the plaintiff walking along the tramway with his hand upon one of the bags. The judge found as a fact that the plaintiff had no intention of stealing the sugar; but Hall, honestly believing that the boy was tampering with the sugar, and with the object of protecting his master's interest, struck him with open hand on the back of the neck. This caused the plaintiff to fall forward, and the back wheel on the near side went over his foot, with the result that his leg had to be amputated.

The plaintiff (by his father as next friend) brought an action claiming damages for the negligence of the defendants' servant. The case came before the Court of Passage of the City of Liverpool, and the learned judge held that although Hall was in the defendants' employment he was in their employment as a carter, and that the last act he had done in such employment (before the accident) was when he handed over the third horse to Henry Parr; at the moment when the act complained of was committed, he was not discharging any duties as a carter, nor was he doing any act incidental to his employment. The judge, accordingly, held that the defendants were not liable; but in the event of a successful appeal he assessed the damages at £500. This decision was overruled by the Court of Appeal and judgment entered for the plaintiff for the amount assessed.

It will be observed that Hall was not walking behind the wagon because he was under any duty so to do, but because he found it convenient as he was on his way home. The position is the same in law as if he had been out for a holiday and had chanced to meet the wagon and walked by its side in order to have a chat with the driver; and the observations of the court appear to go to this length. "If," said Scrutton, L.J., "a chauffeur passing his employer's house saw that it was on fire, it would be his duty, or at any rate he would be authorised, to take reasonable steps to protect it from further damage." "The learned judge," said Atkin, L.J., "has not given enough weight to the consideration that a servant may be impliedly authorised in an emergency to do an act different in kind from the class of acts which he is expressly authorised or employed to do. Any servant is as a general rule authorised to do acts which are for the protection of his master's property. I say 'authorised,' for though there are acts which he is bound to do and for which therefore his master is responsible, it does not follow that a servant must be bound to do an act in order to make his master responsible for it . . . There is a class of acts which in an emergency, a servant though not bound is authorised to do; and then the question is not whether the act of the servant is for the master's benefit but whether it is an act of this class." The lord justice mentioned as something that a servant might, but is not bound, to do, the act of stopping a runaway horse. Suppose, however, that a servant *thought* that a horse was running away when it was not, and thought that it was his master's horse when it was another's, the attempt to stop it might lead to serious consequences to horse and rider. The fact that the servant was mistaken, if he had reasonable grounds for his belief, would—according to the ruling in *Poland* v. *John Parr & Sons*—be immaterial, and the master would apparently be responsible for the consequences of his servant's blunder.

Assuming that although Hall was not at the time doing the work for which he was engaged (that of a carter), and that he had authority to protect his master's property as and when occasion might arise, was the act which was committed against so young a boy—an act committed on a wholly erroneous assumption—one which the employers could be considered to have impliedly authorised?

The leading authority in this class of cases is *Limpus* v. *L.G.O. Co.*, 1 H. & C. 526, in which case the driver of an omnibus belonging to the defendants had pulled across, to prevent the plaintiff's omnibus passing, with the result that the plaintiff's omnibus was overturned. The defendants were held liable, and the fact that they had instructed their driver not to obstruct any omnibus was considered immaterial. A case nearer to the present one, in which the plaintiff also succeeded, is *Ward* v. *G. O. Co.*, 42 L.J. C.P. 265. In that case a passenger in the defendants' omnibus (a horse omnibus), sitting near the door was struck in the eye by the driver's whip. It appeared that there had been a quarrel between the officials of a tramcar and the omnibus and that one of the tramcar men got on the step of the omnibus to take the number. "If," said Kelly, C.B., "the driver whipped at him to drive him down, this opens a question whether he did so to protect himself or his employers against a charge being brought, and though the former is more probable, the other is possible and reasonably probable, and if the latter were the case and the driver was so negligent as to hurt a passenger, I think he was guilty of negligence in the performance of his duty." "A master is responsible," said Blackburn, J., "for his servant's act in his business, though the servant be excited by drink or passion; but if the servant act from private spite—if the act be done so as to divest him of his character as servant the master is not responsible."

On the other hand, in *Abrahams* v. *Deakin*, 1891, 1 Q.B. 516, the plaintiff and a friend went into the defendant's public-house, and the friend, in payment for some refreshment, tendered a gold coin, which he believed to be a half-sovereign but was in fact a German ten-mark piece. The barman called attention to the fact that the coin was foreign, and the plaintiff's friend thereupon gave a half-sovereign in its stead, and change was given. When the plaintiff and his friend left the public-house, one Nunney (who managed the bar in the defendant's absence) followed them into the street and gave them into custody. In an action for false imprisonment brought against the defendant it was held that the defendant was not liable; the manager of the bar had no implied authority to make the arrest, his master's property not being in danger. The arrest seems to have been made for the purpose of vindicating the law for a supposed offence. Again, in the more recent case of *Radley* v. *L.C.C.*, 109, L.T. 162, the defendants had a horse tramway system, and it was a common thing for boys to jump on to the step when the conductor was on the top and get off again before he descended. On the occasion in question, the conductor ran after some boys (including the plaintiff) who, he thought, had been riding on the step, and he cuffed the plaintiff. The plaintiff had not in fact been on the step. The conductor thought that by punishing the plaintiff he would deter boys from doing the like in future. The plaintiff (by his next friend) sued the defendants to recover damages for the assault committed by their servant. It was held that the conductor's act was outside any implied authority and that the defendants were not liable.

BANKES, L.J., in his judgment in *Poland* v. *John Parr and Sons*, quoted with approval the following passage from "Salmond on Torts": "A master is not responsible for a wrongful act done by his servant unless it is done in the course of his employment. It is deemed to be so done if it is either (*a*) a wrongful act authorised by the master, or (*b*) a wrongful and unauthorised mode of doing some act authorised by the master." The lord justice proceeded to state that in the present case the act of Hall was done in his master's interest, and "though perhaps excessive, yet it did not pass beyond the description of an unauthorised mode of doing an impliedly authorised act." If the plaintiff had been stealing, or about to steal the sugar, the act of Hall would have come within the description of an "unauthorised mode of doing an impliedly authorised act." But the plaintiff having in fact been innocent of any such intention, it seems difficult to regard Hall as having implied authority to resort to violence on the mere assumption that the boy entertained a dishonest intention. The responsibility which this decision shows employers to be under in respect of the wrongful acts of their servants is so vague and extensive, that it would seem very difficult, if not impossible, to insure against the risk.

Payment of Alimony *Pendente Lite* to Guilty Wife.

THE decision of the Court of Appeal in *Welton* v. *Welton*, *Times*, 12th inst., appears to have definitely decided that the court is not barred from granting alimony *pendente lite* to a wife, by reason of the fact that she has been herself guilty of adultery. In the above case, the husband had originally brought a suit for dissolution against the wife, but although the wife was found guilty of adultery, the petition was dismissed on the ground of the husband being found guilty of conduct conducing to the adultery. The wife subsequently brought a petition for dissolution against the husband, and it was in the course of these proceedings that her right to alimony *pendente lite* was challenged, on the ground that she herself had been found guilty of adultery in the previous suit.

The jurisdiction of the court to grant alimony *pendente lite* is now to be found in the provisions of the Judicature Act, 1925. By s. 190 (3) of that Act it is provided that "on any petition for divorce or nullity of marriage the court shall have the same power to make interim orders for the payment of money by way of alimony or otherwise to the wife as the court has in proceedings of judicial separation"; and by s. 32 it is provided that "the jurisdiction vested in the High Court . . . shall, so far as regards practice and procedure, be exercised in the manner provided by this Act or by rules of court, and where no special provision is contained in this Act or in rules of court with reference thereto, any such jurisdiction shall be exercised as nearly as may be in the same manner as that in which it might have been exercised by the court to which it formerly appertained." It is therefore necessary to observe the provisions of s. 22 of the Matrimonial Causes Act, 1857. According to that section "In all suits and proceedings, other than proceedings to dissolve any marriage, the said court shall proceed and act and give relief on principles and rules which in the opinion of the said court shall be as nearly as may be conformable to the principles and rules on which the ecclesiastical courts have heretofore acted and given relief, but subject to the provisions herein contained and the rules and orders under this Act."

In *Holt* v. *Holt*, 1858, 28 L.J. P. & M. 12, where a husband had previously obtained in an ecclesiastical court a decree of divorce *à mensa et thoro* on the ground of his wife's adultery, and later filed a petition for dissolution, it was held that the wife was not entitled to alimony *pendente lite*. In his judgment the Judge Ordinary said: "If this suit had not been instituted, the ecclesiastical court having by its sentence in the suit for divorce *à mensa et thoro* declared the wife guilty of adultery, the petitioner could no longer have been compelled to support her. Her condition is in no way improved by the present proceedings for dissolution of marriage, and she is not therefore entitled to alimony *pendente lite*.

The same principle was applied in *Whitmore* v. *Whitmore*, 1866, L.R. 1 P. & D. 96. There the wife had obtained a decree *nisi* for dissolution. Before the decree was made absolute, the King's Proctor intervened, alleging adultery by the petitioner whilst the suit was pending, and the adultery was eventually admitted. The wife had meanwhile, prior to the allegation made against her, obtained an order for alimony *pendente lite*. The court held that she was entitled to arrears of alimony up to the date of the admission of adultery made by her, but not in respect of any subsequent period. In his judgment, the Judge Ordinary said (*ib.*, at p. 98): "If the petitioner had come to the court to ask for alimony at any time subsequent to her confession of adultery, the court would have given her no assistance; but she has obtained an order for alimony, and if the court should decline to enforce that order, it would hold out a premium to all persons upon whom such orders are made to refuse obedience to them as long as possible, in the hope that something may turn up to relieve them from the obligation of payment."

It was suggested on behalf of the husband in *Welton* v. *Welton* that the right of the wife to alimony *pendente lite* depended on whether or not, in the circumstances, a divorce *à mensa et thoro*, or an order for restitution of conjugal rights could have been obtained by her, and it was argued that the ecclesiastical courts would not have made such an order in favour of a guilty wife, reliance being placed on such cases as *Otway* v. *Otway*, 13 P.D. 141, and *Everett* v *Everett*, 1919, P. 298. In *Otway* v. *Otway* both the husband and the wife had been guilty of adultery, the husband being found also guilty of cruelty, and the Court of Appeal refused to uphold the decision of judicial separation granted by BRETT, J., in the court below. COTTON, L.J., in his judgment, said (*ib.*, at p. 150): "The true principle is this, that a wife having been guilty of adultery has put herself in such a position that she cannot be considered as an innocent party in any proceedings which might have been taken in the old Ecclesiastical Courts, or which might now be taken in the Court of Divorce; and therefore on the ground that she is not in a position to come

to that court to give her any relief as to any matrimonial offence which the husband may have committed or for protection on the ground of compensation for a crime of the same nature.

In *Everett* v. *Everett*, 1919, P. 298, the principle of *Otway* v. *Otway* was followed, but the former case differs in one material respect from the latter, inasmuch as in the former the adultery of the wife had been brought about by the husband's procurement or connivance. But it should further be noted, as far as *Everett* v. *Everett* is concerned, that at the date of the petition the wife was still living in adultery.

Everett v. *Everett* would seem to be more in point, in considering *Welton* v. *Welton*, rather than *Otway* v. *Otway*, because the latter was a case "where the adultery was considered *simpliciter*, and without any question of a disability on the part of the other spouse by reason of his conduct having conduced to it" (*per* The Master of the Rolls, in *Welton* v. *Welton*). The Court of Appeal, however, distinguished *Everett* v. *Everett* on the ground that in that case the wife was in fact actually living in adultery at the date of the petition.

There are other cases to which reference might be made. Thus, in *Hope* v. *Hope*, 1858, 1 Sw. & Tr. 94, a wife brought a suit for dissolution against her husband, but the court dismissed the suit on the ground that the wife as well had been guilty of adultery. Subsequently the wife brought a suit for restitution of conjugal rights. The court held that the suit could not be sustained, though the husband had also been guilty of adultery, by reason of the wife's own adultery.

In the Irish case of *Leaver* v. *Leaver*, 1846, reported in App. II of 2 Sw. & Tr., at p. 665, the Consistorial Court of Dublin, however, appears to have arrived at an opposite conclusion, and to have held, on the principle *compensatio criminis*, that where both parties were guilty of adultery, the guilty wife might be entitled to a decree of restitution.

Leaver v. *Leaver*, however, was not followed by the Court of Appeal in *Brooking-Phillips* v. *Brooking-Phillips*, 1913, P. 180; L.T. 397, and was thus explained by BUCKLEY, L.J. (1913, P., at p. 87): "The grounds of the decision" (i.e., in *Leaver* v. *Leaver*), said the Lord Justice, "were that inasmuch as the law as it stood at that time knew no middle term between legal separation by divorce and the continuance of the matrimonial duties with all their consequences, it followed that if both parties had been guilty of adultery, so that neither could obtain a divorce against the other, there remained the duty of *consortium vitæ*, and it was this obligation which the wife was by her petition seeking to enforce. If this was so the recrimination by the wife of the husband's adultery was relevant." The learned lord justice then proceeds in his judgment to refer to the judgment of LOPES, L.J., in *Russell* v. *Russell*, 1895, P., at p. 333, where the effect of the Matrimonial Causes Acts, 1857 and 1884, are considered. "As regards *Leaver* v. *Leaver*," BUCKLEY, L.J., says (1913, P., at p. 88), "the lord justice (Lopes, L.J.) points out (i.e., in *Russell* v. *Russell*) that the Matrimonial Causes Acts, 1857 and 1884, have introduced the middle state whose non-existence at the date of *Leaver* v. *Leaver* was the ground of decision in that case. Section 16 of the Act of 1857 had for the first time made desertion a ground for judicial separation, and s. 5 of the Act of 1884 had introduced as a consequence of a decree for restitution of conjugal rights a right in the petitioner to institute a suit for judicial separation. Whatever might have been the disposition of the court in England towards the decision in *Leaver* v. *Leaver*, before those Acts, the ground of the decision itself seems to me to be by the decision in *Russell* v. *Russell* recognized as being now removed, and whether in choosing between *Leaver* v. *Leaver* and *Hope* v. *Hope* the former would have been regarded as good law in England before those Acts, it cannot in my opinion be so regarded now."

Reference may also be made to *Wilson* v. *Glossop*, 1887, 19 Q.B.D. 379. There the husband was sued for necessaries supplied to his wife, whom he had turned out of doors. The husband set up as a defence the fact that his wife had been guilty of adultery, to which it was answered that the husband had connived at the adultery, both the adultery and the connivance being proved. It was held that the husband was liable. "If a husband," said CAVE, J. (*ib.*, at p. 384), "is liable to maintain a wife whose adultery he has condoned (cf. *Harris* v. *Morris*, 4 Esp. 41), it seems to be equally just that he should be liable for necessaries supplied to his wife whose adultery he has connived at. In the one case he has forgiven the wrong done him, in the other he consented to it, and the maxim *volenti non fit injuria* applies."

If the tests suggested in *Welton* v. *Welton* for the purpose of determining the wife's right to alimony *pendente lite* were applied, inasmuch as she herself had been guilty of adultery, and was thereby, according to such cases as *Hope* v. *Hope*, debarred from obtaining any decree of restitution of conjugal rights, there could be no right to such alimony.

On the other hand, it might be argued that the wife's right to alimony depends on the question whether the husband still continues under the obligation of supporting her, and that, inasmuch as this obligation exists, where the husband has condoned or connived at his wife's adultery, the position must be the same where the husband has merely connived at the adultery, and that, therefore, a guilty wife, where there has been condonation, or connivance, or conduct conducing, on the part of the husband, must be entitled to alimony *pendente lite*.

These are not the tests, however, which were accepted in the court below by the President, or by the Court of Appeal in *Welton* v. *Welton*. The test laid down by the President was whether the wife was a competent suitor for relief in the matrimonial proceedings. "So long as a wife was a competent suitor in the ecclesiastical court in a matrimonial cause," said the learned President, "the general practice of these courts was to require the husband to make provision according to his means for her maintenance and for the costs of her suit. . . . The decisive enquiry, in my view of the matter, is whether the wife on the facts before the court, is a competent suitor for relief in a matrimonial cause." Holding that the wife, in *Welton* v. *Welton*, was such a competent suitor, the court held further that there was jurisdiction to grant alimony *pendente lite*.

But this jurisdiction, it should be observed, is discretionary, and there may be cases in which, although the wife is a competent suitor, the court may, notwithstanding, refuse alimony *pendente lite*. Thus the learned President observes: "Conditions are easily conceivable in which, although this jurisdiction exists, no order could properly be made. A wife who has brought cohabitation to an end by admitted misconduct for which the husband was not to blame, and a wife, who in some independent situation, is seeking divorce and cannot be granted relief except under the discretionary power of the court, may very likely not be a proper applicant for an allotment of alimony. That will depend upon consideration of the relevant facts. In dealing with these, regard must be had not only to the decisions in cases like *Holt*, *supra*, and *Whitmore*, *supra*, but to the state of the existing law of divorce, under which the court has the responsibility of deciding not only as to innocent wives but as to guilty wives, whether provision of some sort should be made for the wife by the husband."

Before concluding, attention might also be drawn to a further point taken by the appellant in *Welton*, viz., that the court ought not to grant alimony *pendente lite* in a case where the parties had been separated for several years, and where the wife had been able to maintain and support herself and her children. As to this, however, the Court of Appeal pointed out that the conduct of the husband in conducing to the adultery had to be considered, and that the question whether or not the wife was in a position to pledge her husband's credit for necessaries, though material, was not the only question, by reference to which the jurisdiction of the court to award alimony *pendente lite* had to be determined.

Matrimonial Jurisdiction of Justices.

Some Recent Cases.

By ALBERT LIECK.

(*Continued from p.* 71.)

On the issue of neglect to maintain, the effect of a deed does not appear to have been considered before *Diggins* v. *Diggins*. The practice was indeed growing up of inserting a clause in deeds that they should determine on payment falling into arrear, and be no bar to proceedings. But such a clause was not considered in the High Court, and while the six months' limit was operative in the case of neglect to maintain, running as it did from the date of the leaving, such a clause was not, in such a case, very useful.

The deed in *Diggins* v. *Diggins*, did not provide for its own determination upon payments ceasing, but there were circumstances in the case which might, had the matter been regarded from that standpoint, have been regarded as repudiation. The deed did provide for discontinuance if there were molestation of the husband by the wife, and the husband discontinued payment on the ground that molestation had occurred; he discontinued the payment as early as from the second week after the deed. The President in his judgment, used expressions which seem to indicate that, in his opinion, the circumstances of the case were very special; "the parties are in disagreement as to their rights under the deed. There are allegations of molestation. There is some evidence of conduct which might be held to amount to molestation." On the assumption that he had been molested, the husband was treating his obligation to pay as at an end; and the wife was ignoring her right to seek to enforce payment in the county court, where the question whether the deed had come to an end as a result of her molestation would have had to be tried.

The decision does treat the wife's statutory rights to seek an order on the ground of neglect to maintain as intact, because not expressly barred by the deed (which did bar certain other legal proceedings). But this treatment of the matter is coupled with a very strong warning that "it must not be supposed that there is an unlimited right in a wife under the amended statute wherever she has entered into a deed at her own volition to apply to the justices to get the terms of the deed reviewed. That would be contrary to good sense, and I do not doubt that, if any case arise where a wife who has entered into a deed proceeds in disregard of it to seek from the justices something different, she will meet with an answer which will prevent the possibility of further question. If she does not meet with it in the first instance, she may meet with it here."

It is quite clear from this that, in the absence of special circumstances, the justices cannot be applied to to vary the terms of a deed which both parties have obeyed, merely, for instance, because the wife is no longer contented with the amount she is receiving; and if, in the deed, she expressly barters away her right to resort to them, she will be bound by her covenant.

The case will, no doubt, produce an epidemic of new clauses, the husband's advisers seeking to bar access to the justices and the wife's to retain it, and some very interesting points may be expected to arise. One elementary fact must be steadily kept in view; the wife's right to maintenance, arising out of her status, is a right to maintenance while living in cohabitation with her husband. In the absence of any agreement altering or affecting this right she cannot, while apart from him, force him to support her, while the matrimonial home is open to her. That is the point from which any consideration of her rights and remedies must always start.

The third case to be considered here, *Outerbridge* v. *Outerbridge*, 1926, 43 T.L.R. 33, very definitely settles the controversial point, whether, when an order is discharged on the ground of adultery, the discharge is operative only from the date of the order of discharge or is retrospective to the date of the act of adultery. It is satisfactory to those who, like the writer, held the opposite view to that laid down in the judgments, that the Lord Chief Justice came to his conclusion "not without hesitation," and that Mr. Justice Avory, while deciding the case the same way as his brethren, did not like the decision. He said "I have already in another case expressed a view which did not find favour with the majority of the court, and need not repeat it."

The incidental point that an order can be enforced after its discharge is to be noted.

These points being definitely decided, that the discharge of the order is not retrospective, and that arrears under it can be enforced, how is the discretion of justices affected? The case, it may be taken, does not fetter their discretion, beyond preventing their issuing process for arrears only to the date of the act of adultery, if arrears to the date of discharge be demanded. Their existing discretion to decline to enforce the arrears at all (see *Grocock* v. *Grocock*, 1920, 1 K.B. 1), remains untouched, and there may be cases where they should refuse to enforce arrears due to an adulterous wife. What the present case decides is, that it is open to them to enforce the arrears; it does not lay down that in every case they shall do so.

One other case may be very briefly noticed, *R.* v. *Copestake*; *ex parte Wilkinson*, 1926, 90 J.P. 191. This case follows *Colchester* v. *Peck*, 1926, 42 T.L.R. 535, in deciding that s-s. (3) of s. 30 of the Criminal Justice Administration Act, 1914, deals only with variance of the maintenance provision of a bastardy order. That section deals with maintenance orders generally, and decisions in bastardy cases may be in point upon the matrimonial jurisdiction of justices. The decisions are incompatible with *Dodd* v. *Dodd*, 1919, 83 J.P. 287, which implied that the section applied to the revival of an order of separation.

R. v. *Copestake* also dealt with "fresh evidence," and laid down very usefully and neatly that "it must be of such a character that not merely is it relevant but of such importance that it would have affected the judgment of anyone if they had had the opportunity of hearing it at the original hearing of the case."

A Conveyancer's Diary.

Practical Conveyancing.

(*Continued from p.* 72.)

It is now proposed to consider what rights pass under the *conveyance* of the land, and, for the convenience of the reader, the exact words of s. 62 (1) (2) and (4) are given below. Sub-section (3) relates to the rights which will be implied on the conveyance of a manor:—

What Passes by a Conveyance of Land.

"62.—(1) *A conveyance of land* shall be deemed to include and shall by virtue of this Act operate to convey, with the land, all buildings, erections, fixtures, commons, hedges, ditches, fences, ways, waters, watercourses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, or any part thereof, or at the time of conveyance, demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to the land or any part thereof.

(2) *A conveyance of land, having houses or other buildings thereon*, shall be deemed to include and shall by virtue of this Act operate to convey, with the land, houses, or other buildings, all outhouses, erections, fixtures, cellars, areas, courts, courtyards, cisterns, sewers, gutters, drains, ways, passages, lights, watercourses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, houses, or other buildings

conveyed, or any of them, or any part thereof, or, at the time of conveyance, demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to, the land, houses, or other buildings, conveyed, or any of them, or any part thereof.

(4) This section applies only if and so far as a contrary intention is not expressed in the conveyance, and has effect subject to the terms of the conveyance and to the provisions therein contained."

The section applies to conveyances made after 31st December, 1881, and, as the words of the section are an exact reproduction of s. 6 of the 1881 Act, it follows that all the cases on the latter section will be applicable.

The above general words would seem to be explicit enough to revive easements which have become extinct by unity of possession, and to pass *quasi-easements* which have been first created by the grantor during unity of ownership, provided that they are apparent and continuous and necessary for the enjoyment of the right granted or to give effect to the common intention as to the purpose for which the land is to be used, and have been and were at the time of the conveyance used and enjoyed by the vendor for the benefit of the property sold: *Kay* v. *Oxley*, 1875, 10 Q.B. 360; *Watts* v. *Kelson*, 1871, 6 Ch. 166, 172; *Barkshire* v. *Grubb*, 1881, 18 Ch. D. 616; *Birmingham, &c., Banking Co.* v. *Ross*, 1888, 38 Ch. D. 295; *Pollard* v. *Gare*, 1901, 1 Ch. 834; *International Tea Stores Co.* v. *Hobbs*, 1903, 2 Ch. 165; *re Walmsley and Shaw's Contract*, 1917, 1 Ch. 93; *Pwllbach Colliery Co.* v. *Woodman*, 1915, A.C. 634; or merely convenient: *Bayley* v. *Great Western Railway Co.*, 1884, 26 Ch. D. 434; and see *Burrows* v. *Lang*, 1901, 2 Ch. 502; *Lewis* v. *Meredith*, 1913, 1 Ch. 571. See also the rather unusual case of *Long* v. *Gowlett*, 1923, 2 Ch. 177.

The implied general words are also wide enough to cover the case of a profit *à prendre*, and therefore a right to depasture sheep on a sheep walk will pass with land to which the right appertains without express mention: *White* v. *Williams*, 1922, 57 L.J. 93. Rights of sporting and fishing are profits *à prendre* and the decision will, therefore, apply to these.

The last case on the subject is *Gregg* v. *Richards*, 1926, 1 Ch. 521, C.A., where it was held that all easements and privileges will pass by a conveyance, unless it is necessary to exclude them, having regard to the terms of the conveyance, and that in that case, notwithstanding some ambiguity and a possible defective plan, in view of the fact that the right in question had been used at the date of the conveyance, there was not a sufficient contrary intention expressed to comply with s. 6 of the 1881 Conveyancing Act [now represented by s. 62 above], and prevent such right passing by the deed.

As regards what will be sufficient to show a contrary intention within s. 62 (4), in *Hansford* v. *Jago*, 1921, 1 Ch. 322, the word "appurtenances" was used in the deed, and it was contended that the effect of such use was to show a contrary intention. Mr. Justice Russell said that it would be a very strong thing to say that when a section of an Act of Parliament provides that a conveyance of land having houses or other buildings upon it is to be deemed to include a large number of matters, unless a contrary intention is expressed in the conveyance, the mere fact that the draftsman has elected to include one or two of these matters expressly in the conveyance should operate as an indication of an intention that the remainder should not be included. And he held that it was not sufficient.

Section 62 will not operate to convey an easement which the vendor has no power to grant expressly: *Beddington* v. *Atlee*, 1887, 35 Ch. D. 317; *Quicke* v. *Chapman*, 1903, 1 Ch. 659; nor a right to an extent inconsistent with the intention to be implied from the circumstances existing at the time of the contract, and known to the purchaser: *Godwin* v. *Schweppes, Ltd.*, 1902, 1 Ch. 926; *re Walmsley and Shaw's Contract*, 1917, 1 Ch. 93.

But, irrespective of s. 62 of the 1925 Property Act, where an owner having been in the habit of using *continuous quasi*-easements in his own soil during unity of ownership, *conveys* to a purchaser that portion of his land for the beneficial ownership of which he has been in the habit of using them, thereby grants such *quasi*-easements by implication, on the principle that a vendor must not derogate from his own grant: *Schwann* v. *Cotton & Hayles*, 1916, 2 Ch. 459. But not if the right was intermittent and non-apparent: *Long* v. *Gowlett*, 1923, 2 Ch. 177. The test seems to be whether the user on which the claim is founded has taken place under circumstances affording a reasonable expectation that it will be continued after the ownership is severed: *Birmingham Banking Co.* v. *Ross*, 1888, 38 Ch. D. 295.

The same rule applies to devises by will: *Schwann* v. *Cotton & Hayles*, *ante*.

The distinction hitherto made between continuous and non-continuous easements has been modified in favour of implying grants on severance, even of non-continuous easements under special circumstances: *idem*.

Where land is sold for a particular purpose, the grantor is under an implied obligation to abstain from doing anything on his adjoining property which would prevent the land being used for the purpose for which the grant was made: *Robinson* v. *Kilvert*, 1889, 41 Ch. D. 88; *Aldin* v. *Latimer, &c., Co.*, 1894, 2 Ch. 437. L.E.E.

Landlord and Tenant Notebook.

The Small Holdings and Allotments Act, 1926.

Attention may usefully be drawn to some of the more important provisions in the Small Holdings and Allotments Act, 1926.

Definition of "Small Holding."

The definition of "small holding" (in s. 61 of the Act of 1908), is now altered by s. 16 of the Act. *Where the holding in question exceeds fifty acres*, the holding, in order to be a "small holding" must, at the date of the sale or letting (i.e, to the smallholder), be of an annual value, for the purposes of income tax, not exceeding £100 (instead of £50, as hitherto). These conditions as to annual value do not, of course, apply to holdings, which do not exceed fifty acres in extent.

Provision of Small Holdings.

County councils are charged with the duty, and have the power, of providing small holdings where they are satisfied that there is a demand for such holdings by persons who desire to buy or lease the same, provided such persons are competent and willing to cultivate the holdings themselves (s. 1).

The earlier Acts made provision for schemes with a view to extending the provision of small holdings. The Act of 1926 contains no provision for such schemes but extends instead the powers of councils to provide small holdings, even in cases where it appears to them that a loss might thereby be incurred (s. 1).

Where, however, a council is of opinion that such a loss may be incurred, it must obtain the consent of the Minister of Agriculture and Fisheries to the provision of the small holdings. The council is required by s. 2 of the Act, in such a case, to submit proposals to the Minister, with estimates of the probable expenses and receipts. The Minister may approve the proposals and estimates with or without modification, and where he approves them, he is empowered to make contributions out of moneys provided for by Parliament towards the losses likely to be incurred in providing the small holdings (s. 2).

Section 3 reproduces s. 9 (2) of the principal Act, as amended by Sched. II of the Land Settlement (Facilities) Act, 1919,

and confers a power on councils to sell or let small holdings to a number of persons working on a co-operative system, duly approved by the council, as well as to any association (not for gain) formed for the purpose of creating or promoting small holdings.

Section 4, which reproduces s. 7 of the principal Act, as amended by the Land Facilities Act ,1919, empowers councils, for the purpose of providing small holdings, to purchase or to lease land, and also to acquire it compulsorily. The council, however, must not acquire any land by any of the aforesaid means without obtaining, in the first instance, the consent of the Minister, and where the land it is proposed to acquire is outside the county, the county council proposing to acquire the land must consult with the council of the county in which the land is situated.

Sale and Lease of Small Holding to Small Holder.

Where a small holding is sold, the consideration is required, in general, to be a terminable annuity of an amount equal to the *full fair rent* of the holding for a period of sixty years. If the annuity is at the option of the purchaser for a lesser period, the capital value will be *pro rata* (s. 5 (1)). "Full fair rent" means a rent which a tenant may reasonably be expected to pay for the holding if let as such, the landlord undertaking to bear the cost of structural repairs (s. 2 (6)). The terminable annuity is to be payable by equal and half-yearly instalments, the balance thereof being secured by a charge on the holding. Power is given to the council to postpone payment of any part of the annuity, except so much as is payable on completion, for a period not exceeding five years.

Conditions on which the Holding is to be held.

When a small holding is *sold* to a small holder, it will be held on certain statutory conditions, any of which may be released or dispensed with by the council, the approval of the Minister thereto being required in the case of holdings in respect of which a contribution is payable by the Minister. These statutory conditions will be found set out in s. 6 (1), and include due payments of the periodical amounts due in respect of the terminable annuity, prohibitions against dividing, selling, assigning, letting or sub-letting the holding without the consent of the council, the cultivation of the holding in accordance with "the rules of good husbandry" (as to which see s. 57 (1) of the Agricultural Holdings Act, 1923), the compliance of dwelling-houses erected on the holding with sanitary requirements, the keeping in repair and insuring of any buildings on the holding, etc. Where a small holding is *let*, the tenant thereof will hold it on conditions similar to those on which it would be held if it had been sold, with the exception of those conditions relating to fire, insurance, and to the terminable annuity.

On breach of any of the statutory conditions, the council may, after giving the small holder an opportunity to remedy the breach (where possible), in the case of a *sale*, either take possession of the holding or order a sale thereof, and in the case of a *lease*, determine the tenancy. It should be carefully noted, however, that the ordinary law of landlord and tenant will apply to *leases* of such holdings, so that the council would not be debarred from taking forfeiture proceedings, for example, where it thought that course desirable.

Where a council take possession of a small holding, the whole interest of the small holder will vest in the council, and the council may either retain the holding or sell or otherwise dispose of it. The *owner* of the holding will, however, be entitled to compensation, the amount thereof being either such sum as may be agreed upon, or, a sum equal to the value of the interest in the holding at the disposal of the county council, less the amount at which the annuity charged on the holding may be redeemed, together with any arrears of annuity (s. 7 (1)). From the sum thus payable to the owner, will be deducted the costs of and incidental to the taking of possession, sale or other disposal of the small holding (s. 7 (4)). It may be, of course, that the value of the holding is less than the redemption value of the annuity charged on the holding, together with the arrears (if any) of such annuity, in which case, the balance may be recovered *summarily* as a civil debt.

Cottage Holdings.

The provisions in the Act with regard to small holdings, with the exception of the provisions with regard to the *letting* of holdings, are applied to a new type of holding, called a "cottage holding." It is true that some of the earlier Acts contain references to somewhat similar holdings (cf. for example, s. 14 of the Agricultural Holdings Act, 1923, s. 3 of the Allotments Act, 1922), but none of these holdings appear to be the same as the "cottage holdings" referred to in s. 12 of the Small Holdings and Allotments Act, 1926, a "cottage holding" being described in s. 11 thereof as a "holding" comprising a dwelling-house together with not less than forty perches and not more than three acres of agricultural land which can be cultivated by the occupier of the dwelling-house and his family."

With regard to the sale of a cottage holding—and by s. 12 (1) cottage holdings cannot be leased—the special provisions of s. 12 (1) (*a*) should be noted. According to these provisions, a county council must not sell a cottage holding, unless the proposed purchaser is a *bona fide* agricultural labourer, or a person employed in a "rural industry," within or adjacent to the county, who has the intention, knowledge and capital to cultivate the land satisfactorily. By "rural industry" is meant an industry carried on, in or adjacent to a village being an industry ancillary to the industry of agriculture or horticulture and for the time being approved by the Minister (s. 12 (2)).

Part I of the Small Holdings and Allotments Act, 1926, contains certain other important provisions, with a view to assisting the small holder. Thus s. 13 contains provisions enabling the county council to advance money to persons desirous of purchasing a small holding, who are in a position to cultivate the holding properly, while s. 14 enables a council to advance money for the purpose of the equipment of small holdings.

Part II of the Small Holdings and Allotments Act, 1926, contains miscellaneous amendments of the previous Acts, the principal amendments being those contained in s. 17, with regard to the compulsory acquisition of land, and in s. 18, with regard to the compulsory hire of land by county councils for the purpose of providing small holdings.

Obituary.

COLONEL C. E. FREEMAN, J.P.

Colonel Charles Edward Freeman, J.P., V.D., solicitor, died on Thursday, the 13th inst., in his eighty-second year. Educated at St. Peter's School, York, he was admitted in 1867 and retired from the firm of Brook, Freeman & Batley, of Huddersfield, in December, 1925. That firm was formed in 1837, when his father, John Freeman, entered into partnership with Thomas Brook. In 1894 he was appointed Registrar of the Huddersfield County Court, being the second to hold that office, which he still held after having sat under seven judges. He was chairman of the Halifax Permanent Benefit Building Society and of the Huddersfield Savings Bank and president of the Huddersfield Club. He commanded a volunteer battalion for many years and afterwards a battalion of the National Reserve and was a member of the West Riding Territorial Association. As a Mason he held the degree of P.P.S.W. Amongst his other activities he took a prominent part in politics, played in the Yorkshire Rugby Football Team and founded the local branch of the Victoria Sick Poor Nurses Fund.

W. P. H.

LAW OF PROPERTY ACTS.

POINTS IN PRACTICE.

Questions from Annual Subscribers are invited and will be answered by an eminent Conveyancer. All questions should be addressed to—The Assistant Editor, "The Solicitors' Journal," 94-97, Fetter Lane, E.C.4. The name and address of the Subscriber must accompany all communications, which should be typewritten (or written) on one side of the paper only and be in triplicate. To meet the convenience of Subscribers, in matters requiring urgent attention, answers will be forwarded by post.

HEIR AND DOWERESS—TITLE.

637. *Q.* A died intestate in May, 1923, leaving B, his widow, and C, his eldest son and heir at law. He was seised of freehold property purchased in 1921 for £400, part of which was provided by B, but she took no receipt or got any security. The deeds of the property were deposited by A with the bank as security for an overdraft and there was £200 owing thereon at his death. The widow took out letters of administration in 1923 and she has since paid off the overdraft out of her own money. She has not assented to the descent. C, who was over twenty-one on 1st January, 1926, has agreed to convey his interest in the property to D. Would you advise the position on 1st January, 1926, and as to how you consider the transaction should be carried out and the suggested consideration therefor, and refer me to a suitable precedent?

A. When A died he was seised of an estate in fee simple subject to a charge to secure an overdraft for £200, and he owed his wife the sum of money advanced as part of the purchase money. On A's death C became entitled to the land subject to B's right of dower; B has since paid off the overdraft and stands in the shoes of the bank with respect to the charge. B's position with respect to the land is therefore as follows: (1) She has a right to dower; (2) a charge for £200 (plus interest?); (3) she has a right (unless this is barred by lapse of time) to recover as simple contract debt her share of the purchase money; (4) the estate has not been fully administered, and so the legal estate in the land remains in the administratrix. C has an equitable interest subject to B's claims, and if he can find a purchaser of that interest all the consideration he can expect is the value of the property *minus* the value of B's claims. C however can sell the land after a written assent made to him by the administratrix, subject however to the same claims. As to whether he would then take the legal estate having regard to dower see "A Conveyancer's Diary," 70 SOL. J., p. 723, and references there made. No precedent has been noted which will exactly fit the case.

PRE-1926 JOINT TENANTS OF LEASEHOLD—MORTGAGE BY DEMISE—DEATH OF ONE—SURRENDER TO SURVIVORS AND LEGAL PERSONAL REPRESENTATIVE OF DECEASED—EFFECT.

638. *Q.* Lease of building land to A, B, C and D, who were *primâ facie* joint tenants, but in equity were equally entitled as tenants in common. Mortgage by demise. B died in 1912 and will proved by E, sole executrix and universal legatee. Surrender in 1924 to A, C, D and E, to intent, etc., etc., "and that the said hereditaments might thenceforth be held by A, C, D and E as tenants in common in equal shares," free, etc., etc. A died in 1925 and will proved by F, his sole executor and estate has not yet been cleared. Proposed sale by C, D and E.

(1) Does the surrender convert the joint tenancy into a tenancy in common? If so, does L.P.A., 1925, 1st Sched., Pt. IV, para. 1 (4), apply, thereby enabling C, D and E to appoint new trustees (themselves, if they like) in place of the Public Trustee, in whom the property would appear to have vested under para. 1 (4)?

(2) If C and D, surviving lessees, are still joint tenants, it is assumed that they hold as trustees on the statutory trusts and can sell as such.

A. The provisions in the L.P.A., 1925, 1st Sched., Pts. II and IV, dealing with legal estates, may require strict application of the principles of conveyancing laid down in the Common Law Courts before the fusion created by the Judicature Act, 1873. Thus, in equity, the surrender of 1924 would have operated as a conveyance by A, C and D (if each executed the deed) jointly to A, C, D and E as tenants in common. But if the question is asked, as it must be, would the acceptance of such a surrender by A, C, and D operate as a common law conveyance to A, C, D and E as tenants in common, the opinion here given must be in the negative, for there was no grant, and although even a deed poll may occasionally operate as a conveyance by way of covenant to stand seised to uses under the statute, as in *Doe d. Daniell* v. *Woodroffe*, 1842, 10 M. & W. 608 (see p. 630), there does not appear to be a precedent for construing the acceptance of a surrender in this way. Therefore on the above reasoning, A, C and D continued in law as lessees as joint tenants, and, in law A, C, D and E were underlessees as tenants in common. On the death of A, C and D held the legal estate in the lease and the underlease became vested in C, D, E and F, but in the case of F, not beneficially. Thus, on 31st December, 1925, C and D held a legal estate to which C, D, E and F were entitled in equity as tenants in common. But, by reason of the L.P.A., 1925, Pt. II, para. 7 (*f*), para. 3 did not operate in favour of C, D, E and F on 1st January, 1926. By reason of Pt. IV, para. 1 (4), they were, on the contrary, divested of their estate in the sub-lease in favour of the Public Trustee, and it is arguable that Pt. II, para. 3, operated to divest C and D in his favour. If so, the sub-lease has merged in law and equity, and the Public Trustee holds the term on the statutory trusts, a result which would also have ensued if the surrender of 1924 had operated as a conveyance from A, C and D. It is also arguable, however, that C and D, by reason of their obligations to the freeholder, were not necessarily obliged to convey to the persons entitled to the underlease, and therefore Pt. II, para. 3, did not divest them.

No real difficulty should arise on the title, the above matters being technical only. A purchaser should, in prudence, require C, D, E and F to appoint C and D as trustees to oust the Public Trustee under para. 1 (4) (iii), and then take assignment from them of the lease accordingly.

UNDIVIDED SHARES—ONE SETTLED 31ST DECEMBER, 1925—TITLE.

639. *Q.* A testatrix by her will proved in 1911 devised two houses, No. 1 and No. 2, to her trustees, upon trust to permit X to have the use of both houses during life, and after the death of X upon trust as to No. 1 for A for life, and as to No. 2 for B absolutely. One trustee died in 1913, and X, who was the other trustee, died in 1921, leaving a will and one executor, who proved it. From 1921 to 1926 the rents and profits of the houses were collected by agents and paid to A and B respectively. Both A and B now wish to sell.

(*a*) In whom did the houses respectively vest on 1st January, 1926.

(*b*) Can B give title to No. 2 as estate owner without assent or other formality?

(*c*) It is assumed that to enable A to give title X's executor must appoint two trustees of the will of the original testatrix, who must then (or in the same deed) assent to the vesting of No. 1 in A as tenant for life. Is this correct?

(*d*) If so, is there anything to make invalid an appointment of A and B as such trustees?

A. (1) As to property No. 1—

(*a*) This is settled land, the legal estate in which vested in A as estate owner trustee under L.P.A., 1925, 1st Sched., Pt. II.

(*c*) X's executor will appoint another person to act with him as additional S.L.A. trustee pursuant to S.L.A., 1925, s. 30 (3). The two will then declare the property to be vested in the tenant for life.

(*d*) No.

(2) As to Property No. 2—

(*b*) Yes.

DEVISE—ASSENT—MORTGAGE BY DEVISEE BEFORE ASSENT—EFFECT.

640. *Q.* A testator who died in 1924, after appointing B to be his executor and trustee, gave all his property by will to B, "In trust to convert the same into money by sale or otherwise and to divide the proceeds (after paying his funeral and testamentary expenses and debts) amongst all his children—sons at twenty-one—daughters at twenty-one, or marriage in equal shares with power for his trustee to invest the expectant share of infant children." The testator left personal estate and a freehold house (subject to a mortgage), which his three children, X, Y and Z, continued to occupy. B paid off the mortgage (taking a reconveyance in 1924) and all duties and debts were paid out of the personal estate. On the 25th March, 1925, B, by an assent under hand (after reciting that X, Y and Z, who were then all of age, had elected to take the real estate unconverted) "as such executor as aforesaid thereby assented to the devise and bequest of the residuary real and personal estate contained in the said will" to X, Y and Z. On 17th March, 1925, X conveyed "All his one-third share or other his estate and interest of and in All that" freehold dwelling-house by way of mortgage, and this document was inadvertently dated prior to the assent. X, Y and Z have now sold the house, and upon the validity of the assent depends the question as to who took the legal estate on 1st January, 1926. There being no necessity for the trust for sale to operate, and B never having acted as trustee as distinct from executor, it is contended that an assent given in pursuance of the L.T.A., 1897, was sufficient to vest the legal estate in X, Y and Z, and that by reason of X's mortgage (which is being paid off out of his share of the proceeds of sale) the legal estate vested in the Public Trustee under the L.P.A., 1925, 1st Sched., Pt. IV, para. 1 (4). Is this view correct?

A. The mortgage of X's share operated, of course, as from the date of delivery (cases collected, "Halsbury's Laws," vol. X, para. 685), so that if the mortgage was, in fact, delivered after the assent, the mortgagee took the legal estate in an undivided third. If before, X could only convey his equity to the mortgagee—with, however, the obligation under his implied covenant for title to convey the fee when obtained. In either case, the incumbrance ousted the operation of the L.P.A., 1925, 1st Sched., Pt. IV, para. 1 (2), and it is agreed that the Public Trustee took under para. 1 (4).

COPYHOLDS—VESTED IN BARE TRUSTEES 1ST JANUARY, 1926—BENEFICIARY ABSOLUTELY ENTITLED—PERSON TO MAKE COMPENSATION AGREEMENT.

641. *Q.* By a marriage settlement made in 1891 the owner settled certain copyholds upon his wife for life with the remainder to the issue of the marriage, and in default of issue in trust for himself, the settlor. J and B, the trustees, were admitted tenants in 1892. In 1899 B retired from the trust and Z was appointed new trustee, and the copyholds were in the appointment stated to "be transferred to and vested in the trustees as joint tenants" for the purposes of the trust. This was not followed by any admission, and the tenants on the roll are still J and B. In 1904 the owner died without issue, leaving his entire estate to his wife absolutely. She died in 1926, and by her will appointed J and X trustees thereof. B, the trustee who retired, is still alive, but is so feeble in health that no further signature can be procured from him, and in any case the steward points out that no further entry can now be made on the rolls. Who are the proper persons to enter into the compensation agreement?

A. On 31st December, 1925, the wife was, by the merger of her interests, equitable owner in fee, the trustees being the legal tenants on the roll. On 1st January, 1926, by virtue of the L.P.A., 1922, s. 128 (1) and (2), and the 12th Sched., para. 8 (*d*), the land was enfranchised, and the wife became the freeholder, and the "tenant" within s. 143 (1), who could make the agreement contemplated by s. 138 (1) (*a*). When she died, her legal personal representatives became "the persons deriving title under her" within s. 143 (1), and so can make the agreement. But if the beneficiaries are *sui juris*, the executors may perhaps more wisely make their assents and leave the beneficiaries to do their own bargaining. B need not be troubled.

EQUITABLE MORTGAGE BY DEPOSIT—SOLE MORTGAGEE—BEING TRUSTEE OF EQUITY—SALE—RECEIPT OF PURCHASE-MONEY.

642. *Q.* A testator died in 1877 having by his will appointed X, Y and Z as his trustees, and devised his property to them, upon trust to sell his real estate with a full power of sale and a declaration that the receipt of his said trustees or the trustee of his will for the time being should be a good and sufficient release to a purchaser. At the time of his death testator had deposited his deeds with his bankers. After his death the bankers by deed assigned the principal moneys owing on their deposited and granted all the property comprised in their security, so far as it was then vested in the bank, unto A and B. By a deed bearing the same date, X, Y and Z covenanted with A and B for payment of the principal moneys, and that they would at the request of A and B execute the trusts for sale contained in the will of their testator and sell and convey the hereditaments comprised therein to such persons or person as A and B might direct. The mortgage debt was transferred by A and B to other mortgagees, and eventually Z and M took a transfer of the mortgage. Z eventually became entitled to M's share of the mortgage moneys and took a transfer to himself of the whole of the mortgage debt on the property and the securities therefor. X and Y, two of the trustees of the will, have been dead many years. Z now wishes to sell part of the property held under the trusts of the will, but the whole of the purchase-money will be paid to himself in part discharge only of the mortgage moneys owing to him. Is it necessary that additional trustees of the will of the testator should be appointed? The purchase-money will be received by Z as mortgagee. Can he receive the moneys as mortgagee and properly convey the legal estate as sole trustee, or is it necessary to appoint new trustees of testator's will to give a good title?

A. It may first be noted that the rights of a mortgagee by deposit of title-deeds are not affected by the L.P.A., 1925, see s. 13. It is not stated in the question whether the deposit was covered by a memorandum under seal, but, if so, the opinion here given is that, if the mortgage was also made subsequently to Lord Cranworth's Act of 1860, and if the legal estate was vested in the mortgagor, Z, as mortgagee, can give title by sale under the power in that Act and convey the legal estate to a purchaser, see *Re Solomon and Meagher's Contract*, 1889, 40 C.D. 508. But even if the deposit was not covered by a memorandum under seal, a reasonable purchaser ought to accept title from Z if he has the legal estate and is sole equitable owner, see answer to *Q.* 244, p. 541, *ante*.

AGRICULTURAL HOLDING—DETERMINATION OF INTEREST OF LANDLORD—AGRICULTURAL HOLDINGS ACT, 1923, ss. 24, 25.

643. *Q.* A, who owned land in fee simple, granted a lease of it to B for a term of ninety-nine years, determinable on the death of the survivor of three persons, B covenanting to improve, to pay all outgoings, and to do all repairs. B makes

the improvements and then sublets to C at an increased rent, C covenanting to do the inside repairs and B the outside. It will be seen that B, the grantor of the underlease, is a landlord entitled for an uncertain interest, and the sub-tenant, therefore, would seem entitled under s. 14 of the Agricultural Holdings Act, 1920, to hold on until he receives twelve months' notice to quit, although his landlord under his lease is bound to quit when the last life dies. By L.P.A., 1925, s. 149 (6), the original lease is converted into a term of ninety-nine years, determinable after the death of the last life by one month's notice. If the last life named in the original lease die and the grantor of that lease give his lessees one month's notice to quit, how do the original grantor, his lessee, and the sub-lessee stand to each other, and how is the owner of the land to obtain possession, and is he in any way liable to the undertenant for disturbance or otherwise? Must the notice be one month, or as provided by s. 25 of Agricultural Holdings Act, 1923, twelve months?

A. Section 14 of the Agriculture Act, 1920, is repealed by s. 58 (3) and the 4th Sched. of the Agricultural Holdings Act, 1923, and re-enacted by s. 24 of that Act. Assuming C paid rack-rent, the opinion here given is that this section applies on the cesser of B's interest under s. 149 (6) of the L.P.A., 1925. The statutory right of a sub-tenant to continue in possession after the cesser of his landlord's interest is now, of course, well established in our law. The rights of A, B and C in this case are regulated by s. 24, *supra*.

PARTNERSHIP PROPERTY—PARTNER SOLE TRUSTEE—POWER OF SALE—EXERCISE.

644. *Q.* In 1922, after freehold property had been conveyed to A, one of two partners, the purchase price having been paid out of partnership moneys, A executed a declaration under seal that "he his heirs and assigns shall stand seised of . . . the said hereditaments . . . In trust for the partnership firm of X.Y. and will permit the said firm and their assigns to occupy the said premises as part of their partnership property." Then follows a power for the existing partners and the survivor to appoint new trustees, also a power of sale in the terms following: "That the trustees or trustee for the time being of these presents shall have full power in favour of a purchaser mortgagee or lessee without the concurrence of any beneficiary to sell mortgage lease or otherwise dispose of the premises or any part thereof and to receive and give effectual discharges for any moneys arising from any such disposition and that every such disposition or receipt shall be absolutely binding upon all persons having or claiming any interest in the partnership property." A similar declaration is found in Precedent III in Vol. 15 of the second edition of the "Enc. of Forms and Precedents." The circumstances are, A having died, the surviving partner wishes to appoint new trustees to sell the property under the power of sale.

(1) Can this be done, and, if so, will the purchaser receive a conveyance which will over-reach all equities?

(2) The editors of the twenty-second edition of "Prideaux's Precedents" point out (p. 567, note (*a*), p. 62 and p. 601, note), that an express power of sale is not now exercisable by trustees in view of s. 1 (7) of the L.P.A., 1925, and the S.L.A., 1925, ss. 108 (2) and 109. Is this so, as the declaration of trust in question was a conveyancing device and contained full powers of appointing new trustees thereof in every conceivable event? If the editors are right it would appear that the precedent referred to above is useless.

A. It is not stated whether A died before or after 1st January 1926, but in the first alternative he, and in the second alternative his legal representatives (assuming the latter were not bare trustees for a single surviving partner), held the property on that date under the L.P.A., 1925, 1st Sched., Pt. IV, para. 1 (1), upon trust for sale. Therefore, in answer to the questions put—(1) Yes. The surviving partner will appoint pursuant to the T.A., s. 36 (1), and the new trustees will sell under the L.P.A., 1925, s. 35, free from equities other than those set forth in s. 2 (3) and (5). (2) The notes referred to in "Prideaux" relate to settled land, which is vested, not, as here, in trustees, but in the tenant for life. If a legal estate is vested in two or more they now hold jointly in trust for sale: see ss. 34 (1) and (2) and 36 (1). Until sale, which they can postpone indefinitely under s. 25, they have the extensive powers conferred by s. 28, and the clause quoted may perhaps operate to give them more under the S.L.A., 1925, s. 109.

YORKSHIRE REGISTRY—LOCAL LAND CHARGES—L.C.A., 1925, ss. 10 (6), 15, 25—L.P.(AM.) A., 1926, s. 7, & SCHED.

645. *Q.* I am acting for an urban district council who are under the Housing Act, 1925, conveying to purchasers land and dwelling-house in the West Riding in fee, part of a housing estate, and the conveyances contain restrictive covenants on the part of the purchasers. The conveyances are in duplicate and registered at the West Riding Registry of Deeds, Wakefield. I am in some doubt as to the necessity or otherwise of a further registration of the restrictive covenants at the West Riding Registry as land charges, Class D (ii) in s. 10 (6) of the L.C.A., 1925. Sub-section (1) requires registration in the Register of Land Charges, but s-s. (6) provides that as affecting land within any of the three ridings registration in the prescribed manner in the appropriate local deeds registry of the document creating a restrictive covenant shall be sufficient in place of registration under the Act and the registration shall as respects such land effect as if the land charge created by the document had been registered under this Act. It is submitted that as the document creating the restrictive covenants has been registered in the appropriate registry a further registration as a land charge is not required either in the Local Deeds Registry or the Land Charges Registry under this Act. If further registration is necessary apparently it could be effected in the Local Land Registry as enforceable by my clients, the local authority, with whom the covenants are entered into? (70 SOL. J., p. 911.)

A. The questioner will have noted that the L.C.A., 1925, s. 10 (6) has been revised by the L.P.(Am.)A., 1926, s. 7 and Sched., as well as s. 15, and that local land charges as such are not to be registered in the local deeds registry. Restrictive covenants enforceable by a local authority come within the L.C.A., 1925, s. 15 (7) (*b*) (as amended by the L.P.(Am.)A., 1926), and s-s. (3) provides that registration by the proper officer shall take the place of registration with the registrar. Section 21 is also clear that, if the proper registration is effected under Pt. VI (or s. 15), no further registration under the Act need be made. The conveyance, as such, will continue to be registrable in the local deeds registry: see L.P.A., 1925, s. 11.

WILL—DEATH OF TESTATOR IN 1926—TRUST FOR SALE—INFANT BENEFICIARY—POSITION OF TRUSTEE.

646. *Q.* Testator F.M. by his will appointed X and Y executors, and trustees, and subject to certain legacies gave all his property to them upon trust to sell with power to postpone sale, and to stand possessed of the proceeds or investments representing same, upon trust for "all my children who being sons shall attain twenty-one years of age, or being daughters shall attain that age or marry under that age." F.M. died in February, 1926, and probate of his will was in June, 1926 granted to X (Y having renounced). F.M. left two sons and one daughter, of whom only one son was of age. The daughter has now married and so become entitled to her share, but the other minor will not be of age for several years. The trust property consists wholly of investments. X has now fully administered the estate, and thus has automatically become a trustee. X wishes to know whether, having regard to the minority still subsisting, it is necessary for another trustee to be appointed. Also if he would be safe in handing capital money to the infant married daughter?

A. Assuming "investments" include pure personalty only, it is not necessary in law for another trustee to be

appointed. The married infant can give a valid receipt for income only, see T.A., 1925, s. 31 (2) (i) (*b*) and L.P.A., 1925, s. 21.

SETTLED LAND—SETTLED AFTER 1925—DEATH OF TENANT FOR LIFE—PROCEDURE.

647. *Q.* A, who died in October, 1926, by her will appointed her husband B, executor and after specific and pecuniary bequests devised and bequeathed the residue of her property after payment of debts &c., to B for his life and after his death to her daughter C. The value of the estate (which includes a freehold house) does not exceed £300. No sale is anticipated during B's lifetime and no vesting assent is proposed. (1) On B's death, will it be necessary to appoint new trustees to convey to C, and should probate or administration be taken out, bearing in mind that no duty will be payable on B's death? (2) If so, is appointment advised now? A precedent will oblige. (3) Will an assent suffice to vest the property in C? If so, how should the trustees be described?

A. (1) B ought to assent to the devise to himself as tenant for life, see S.L.A., 1925, ss. 6 (*b*), 8 (1) and (4), and the A.E.A., 1925, s. 36 (1), and to appoint another trustee for the purposes of the S.L.A., 1925, see 30 (3). Until he assents to himself, the presumption is that he holds as executor, and if he then dies having appointed his own executors, they become A's executors under the A.E.A., 1925, s. 7, and the settled property vests in them as such. If he dies intestate, or without having appointed an executor, the property will vest in the special representatives constituted under the J.A., 1925, s. 162. In either case the duty of A's legal personal representatives in whom the property is vested will be to convey to C under the S.L.A., 1925, s. 7 (5), assuming she is of age. (2) B should appoint a co-trustee now under the S.L.A., s. 30 (3). (3) Yes, see the sections of the S.L.A., 1925, quoted above. The trustees will be B's special personal representatives assenting as such.

SETTLED LAND—APPOINTMENT BY COURT OF TRUSTEES FOR THE PURPOSES OF THE S.L.A., 1882-1890—TRUSTEES FOR PURPOSES OF S.L.A., 1925.

648. *Q.* By an order of court dated 1st February, 1921, the judge appointed H and M trustees of certain settlements contained in a will *for the purpose of the above-mentioned Acts.* One of the original trustees is dead, but another was appointed in his place, before 1926. M (trustee), is also the present life tenant under the settlement, and it is desired to sell one of the properties comprised in the order of court. It is assumed that a vesting deed should be executed by the trustees in favour of the life tenant, but is an appointment of trustees under the S.L.A., 1925 necessary? Clause 2, para. 1, 2nd Sched., S.L.A., 1925, refers to trustees for the purpose of "*this*" Act.

A. By the S.L.A., 1925, s. 33 (1) the trustees for the purposes of the S.L.A., 1882-1890 in this case automatically became trustees for the purposes of the S.L.A., 1925. No new appointment is therefore necessary.

LANDLORD AND TENANT—COVENANT TO REGISTER ASSIGNMENTS, UNDERLEASES, ETC.—MORTGAGE OF TERM—PAYMENT OFF UNDER L.P.A., 1925, S. 115—WHETHER WITHIN COVENANT.

649. *Q.* Is the statutory receipt under L.P.A., 1925, s. 115, within a covenant by a lessee to register with the freeholder's solicitors, "All assignments and underleases" and assignments of underleases (1) with the addition "and dispositions," or (2) without such addition? Section 5 of the Act provides for cesser of mortgage terms immediately on payment, and hence there appears to be no term to assign or surrender. But s. 115 provides that the receipt "shall operate . . . as a surrender" Prideaux's "Conveyancing Precedents," vol. II, p. 74, note, favours the opinion that the receipt is only evidence of the discharge of the mortgage, and therefore is not within the covenant.

A. The statutory receipt, by s. 115 (1) (*a*), operates as a surrender of the mortgagee's sub-term. The opinion here given is that a surrender is not an assignment, the latter term contemplating a transfer of rights, not a cesser of them. As to "dispositions," the word is used legally in its ordinary sense, see *A.-G.* v. *Montefiore*, 1888, 21 Q.B.D. 461 (one of the numerous authorities on the use of the word in the Succession Duty Act, 1853) at p. 464. One of the meanings given to the word "dispose" in the dictionaries is to "deal with," and a lessee who pays off a mortgage deals with the sub-term by extinguishing it or disposing of it altogether. The answer to the first question asked is therefore in the affirmative, if the covenant includes dispositions of underleases, and to the second in the negative. The note quoted in "Prideaux" does not deal with the effect of s. 115 (1) (*a*), *supra*.

COPYHOLDS—MINERALS AND MANORIAL RIGHTS—COPYHOLD ACT, 1894, SS. 21 AND 23.

650. *Q.* In many copyhold manors on enfranchisement, the rights are accepted and reserved under ss. 21 and 23 of the Copyhold Act, 1894, and in conveyances after such enfranchisement, these rights are also reserved in the habendum.

Does this mean that these assurances which reserve such rights must be produced to the steward of the manor under the provisions of the L.P.A., 1922, s. 129 (1), or are the properties to be treated as freehold and the manorial rights extinguished?

A. The L.P.A., 1922, Pt. V, and the 12th sched. apply only to land which was copyhold on 31st December, 1925, but they apply to all such land. The rights reserved to the lord in the Copyhold Act, 1894, in respect of land enfranchised before 1926 (except escheat, which is entirely abolished: see A.E.A., 1925, s. 45 (1) (*d*)) are also reserved to him in respect of land enfranchised by the L.P.A., 1922: see 12th Sched., para. (5). Section 129 (1) applies to such land as last mentioned (but not to land enfranchised before 1926) so long as the manorial incidents remain unextinguished.

A.E.A., 1925, S. 36 (5) AND (6).

651. *Q.* B, an intestate, recently died; letters of administration were granted to her daughter, D. The estate consisted principally of realty. This was sold in lots by auction. The solicitors acting for one purchaser insist that a memorandum of their client's purchase be endorsed on the grant under s. 36, s-s. (5), of A.E.A., 1925. The vendor's solicitors contend that the words "assent or conveyance" appearing in the section have reference to an assent or conveyance to a trustee or beneficiary, and do not include a conveyance to a purchaser for value. Who is right?

A. Having regard to s-s. (6), which makes a conveyance from D to a purchaser, with a recital that there has been no previous assent or conveyance, valid as if no previous assent or conveyance had been made (assuming, of course, that there is no notice of any such previous assent endorsed on the probate under s-s. (5)), the opinion here given is that the vendor's advisers are right. And this conclusion is strengthened by the saving in s-s. (6) in favour of a previous purchaser from the legal personal representative, although no notice of his conveyance appears on the probate. If, however, the purchaser's solicitors insist on the memorandum, the vendors can do no harm to themselves by complying with it.

UNDIVIDED SHARES—SALE OF INTERESTS OF CO-OWNERS TO CO-OWNERS—CARRIED OUT BY DECLARATION OF TRUST—VALIDITY.

652. *Q.* Prior to 1926 two freehold farms were conveyed by separate deeds to eight persons, A, B, C, D, E, F, G and H, as tenants in common in equal shares. It is now proposed that two of them, B and C, shall purchase the shares of the other six in one farm, and the other six shall purchase the shares of B and C in the second farm, the purchase moneys being in each case provided in equal shares. The farms were in fact held by the eight owners as partnership property, although this does not appear on the title. On the above sales being carried out, the existing partnership will be

dissolved and fresh partnerships will be entered into between B and C in one case and the remaining six in the other case. How can the purchases best be carried out? We take it that, as there are more than four joint owners, both farms beve vested in the Public Trustee, and that new trustees must ha appointed to hold upon the statutory trusts. Will the following method be effectual:—

(1) A deed executed by all eight, appointing B and C trustees of the first farm upon the statutory trusts.

(2) A declaration of trust by B and C that they hold the proceeds of sale of that farm in trust for themselves equally.

(3) A deed executed by all eight appointing, say, A, D, E and F trustees of the second farm upon the statutory trusts.

(4) A declaration of trust by A, D, E and F that they hold the proceeds of sale of the second farm in trust for themselves and A and H equally.

If so, will each deed require merely a 10s. stamp?

This will be a saving on the old dispensation where conveyances of the shares would have attracted *ad valorem* duties.

A. It is not agreed that the scheme suggested will obviate the necessity of duly stamped conveyances of the equitable interests of the persons named in the respective farms, and a declaration of trust by B and C in their own favour would be an inadequate answer to the claim of A's trustee in bankruptcy, or even of A himself, unless, pursuant to ss. 53 and 54 of the L.P.A., 1925 (superseding the corresponding repealed provision of the Statute of Frauds) there was a conveyance from A put in writing and appropriately stamped under the Stamp Act, 1891, s. 54, as amended in respect of the percentage by later statutes. Probably, however, some stamp duty may be saved by the application of the L.P.A., 1925, s. 28 (3), see Stamp Act, 1891, s. 73. The procedure would be to divest the Public Trustee under the L.P.A., 1925, 1st Sched., Pt. IV, para. 1 (4) (ii), in favour of new trustees, and then to partition under s. 28 (3), with *ad valorem* stamps on money passing for equality of exchange.

LIFE POLICY—ASSIGNMENT TO LEGAL PERSONAL REPRESENTATIVES OF SURVIVORS OF ASSIGNEES.

653. *Q. Joint Life Policy.* A, in accordance with the trusts of a settlement, took out a life policy payable to the executors or administrators of the survivor of B and C. B dies. (1) Can the survivor assign or surrender the policy during his life? (2) If the answer to (1) is in the negative, do the policy moneys pass under C's will? Please give your reference to cases.

A. The data are not very clearly given. If the policy was on A's life it was not a joint life policy. If taken out by A on the lives of B and C there would be a question of insurable interest. But assuming the policy was on A's life, he agreeing to pay the premiums, and that by the settlement he purported to assign it to the executors or administrators of the survivor of B and C (presumably unimpressed by trusts, other than those arising on the will of such survivor) the position would be analogous to a settlement of the policy moneys upon such trusts as the survivor should by will appoint and in default of such appointment upon trust for the persons entitled by statute on his intestacy. In effect therefore, C has a testamentary power over the policy moneys, and can deal with them by covenanting to make a will in a certain way and not to revoke such will. As to the effect of a breach of such covenant if given for valuable consideration the questioner is referred to *re Parkin Hill* v. *Schwartz*, 1892, 3 Ch. 510; and *Stone* v. *Hoskins*, 1905, P. 194. The effect of the law laid down in these cases is that on such an assignment the assignees would have priority over the rights claimed by legatees (who would be volunteers) under any will made by C or of relatives under the A.E.A., 1925, on his intestacy. Thus, the policy moneys would be liable to make good his covenant. The destination of the interest on the policy moneys if A pre-deceases C, until C's death, will depend on the terms of the settlement. Incidentally, it might perhaps have been expected that the insurance company would have raised objection to a notice of assignment to a particular person's legal personal representatives, but if they have not done so they will of course only pay the policy moneys to such representatives.

TRUSTEE—BENEFICIARIES—COVENANTS FOR TITLE.

654. *Q.* In cl. 26 of The Law Society's General Conditions of Sale (1925) it is provided that where joint tenants holding on trust for sale are absolutely and beneficially entitled to the net proceeds of sale they shall be expressed to convey as beneficial owners. We shall be glad to have your opinion on the following points, namely:—

(1) If vendors convey as trustees, and also each of them conveys as beneficial owner of his undivided moiety of the proceeds of sale, it seems to us that the purchaser will not obtain the benefit of full covenants for title as he would have done if (under the old law) each vendor had conveyed as beneficial owner of his undivided moiety of the *land*. Do you not agree?

(2) In a recent case we have expressed that the vendors convey as trustees, and we have added the following clause after the habendum: "It is hereby agreed and declared that notwithstanding that the conveyance hereby made is expressed to be made by the vendors as trustees the same covenants by the vendors for the title to and further assurance of the land hereby conveyed shall be deemed to be implied herein as if this conveyance had been made before the said Law of Property Act came into operation and they had been expressed to convey the same as beneficial owners each of one undivided moiety." Do you see any objection to this clause?

(3) Can you suggest any better method of carrying out the intention of the proviso in the above-mentioned cl. 26?

A strong argument in favour of asking vendors in the above cases to give full covenants for title is that there seems to be no reason why purchasers should be in a worse position this year, and in the future, than they were before the new legislation took effect.

A. (1) The right form of covenant for title in the circumstances mentioned above is discussed in the answer to *Q.* 422, p. 889, vol. 70, to which the questioners are referred. As stated in that answer, the published precedents are not uniform in the matter. If, however, vendors convey as trustees for sale, there is nothing left for beneficiaries as such to convey (apart from the prohibition of the L.P.A., 1925, s. 42 (1) (*a*)), so the questioners' conclusions are accepted.

(2) The clause set forth appears to work out the proper liability.

(3) Possibly a more concise draft might be framed if the vendor trustees covenanted as beneficial owners, with a clause limiting their liability in damages to their aliquot shares, something on the lines of the limitation of a tenant for life's similar covenant. In no case, of course, if A and B are joint owners, is A liable for B's act or default unless A has "knowingly suffered" it, but possibly A might be fully liable for a common settlor's or testator's default.

UNDIVIDED SHARES—SETTLEMENT BY WILL—LIFE INTERESTS.

655. *Q.* On the 31st December, 1925, freehold land was held by trustees of a will, which came into operation in 1876, upon trust to divide the rents between the testator's five children, and in the event of the death of any child, then the deceased's share was to be divided between his children, being the testator's grandchildren. All, except one, of the testator's five children died prior to the 1st January, 1926, and the last died in February, 1926. The testator, upon the death of all his five children, desired his trustees to sell the property, which they are doing, the proceeds of sale to be divided equally between the testator's grandchildren. The trustees of the will

were not appointed trustees for the purposes of the S.L.As. We desire to know whether any vesting deed is necessary, and whether the property can be sold either under the S.L.A. or the L.P.A., 1925? References to sections will oblige.

A. The rents while any of the testator's children survived appear to have been divisible *per stirpes*, but the proceeds of sale after the death of the survivor between the grandchildren *per capita*. Thus, no grandchild would, on the death of the survivor, necessarily have the same share in the proceeds of sale as he enjoyed in the income. In these circumstances, on the reasoning contained in the amended answer (p. 1214, Vol. 70) to *Q.* 554 (p. 1174, Vol. 70, and see p. 55, *ante*) the surviving child and the grandchildren, children of deceased children, who were of age, were joint tenants for life under the S.L.A., 1925, on 1st January, 1926, but the trustees were entitled to the legal estate, upon trust for sale, upon the death of the last child of the testator. The trustees should therefore execute a vesting deed and then require conveyance to themselves from the surviving tenants for life under the S.L.A., 1925, s. 7 (5), upon trust for sale.

Correspondence.

"Personal Representative" in the S.L.A., 1925.

Sir,—Referring to "Points in Practice," *Q.* 605, and the answer to it (71 Sol. J., p. 52). Since the expression "personal representative" in the S.L.A., 1925, by definition (s. 117 (1) (xviii)) means "the executor original or by representation," it would seem that H.A. and A.W.L. are under s. 30 (3) trustees of the settlement for the purposes of the Act, this being in conformity with the answer to *Q.* 405 (70 Sol. J., p. 834). This appears to be a question distinct from the question of the devolution of the powers of trustees for the purposes of the S.L.A. under the T.A., s. 18. If the operation of this section is, as suggested, confined by s. 64 of the same Act, why should not other sections be similarly confined? It is submitted that the personal representatives from time to time of a trustee for the purposes of the S.L.A. are, until the appointment of new trustees, trustees for all purposes. This appears to be in accordance with the note in "Prideaux's Precedents," 22nd ed., Vol. 3, p. 301.

Lincoln's Inn, 25th January. G. H. Paice.

[This is a matter on which there seems to be some difference of opinion; but the view most generally accepted is that expressed by our correspondent, namely, that the personal representatives of a sole surviving S.L.A. trustee are the S.L.A. trustees until the appointment of new trustees. —Ed., *Sol. J.*]

County Court Rules and Payment of Fees.

Sir,—I should be interested to know whether any of your readers can explain why the County Court Rules provide for payment of a fee of 30s. to £2 10s. upon issuing a summons for £26 and upwards, whilst a writ for £100,000 can be issued in the High Court upon payment of 30s.

It seems rather anomalous that the county court should ever have been termed the Poor Man's Court!

Gray's Inn, W.C.1, 20th January. Ronald Rubinstein.

Small Tenements Recovery Act, 1925.

Sir,—With reference to the answer to *Q.* 578 on p. 1236 of your issue of the 25th ult., is it correct to say that the jurisdiction of justices under the Small Tenements Recovery Act, 1838, can be evoked, as apparently this Act is only applicable when the relationship of landlord and tenant exists, which would not appear to be so in the case under discussion, as the sister of A was admittedly a trespasser: vide *Brown* v. *Newmarch*, 40 J.P. 212, and other cases cited on p. 920, "Stones' Justices Manual," 56th ed.

I have always understood that in cases of this kind proceedings in ejectment should be instituted under s. 59 of the County Court Act, 1888, provided, of course, that the rent comes within the statutory limit.

I would add that the cost of proceedings before justices under the Small Tenements Recovery Act is very much less than those commenced in the County Court.

Bournemouth, 31st December, 1926. A. E. K. D. Bunton, Clerk to the Justices, Wareham and Swanage.

Sir,—If the sister was a trespasser—i.e., if the relationship of landlord and tenant *never* existed between her and the landlord, then, clearly, proceedings under the Small Tenements Recovery Act will not lie, since that Act only applies to cases where the relationship of landlord and tenant existed (cf., s. 1). In that event proceedings in ejectment under s. 59 of the County Court Act, 1888, should be taken.

The position of the sister, however, ought to be carefully considered in order to ascertain whether the relationship of landlord and tenant did not in fact exist, since, if she had been even a *tenant at will*, the Small Tenements Recovery Act, 1838, might apply. Your Contributor.

Somerset House and a Deceased Person's Estate.

Sir,—Could any of your readers inform me under what Act or by what authority the officials at Somerset House supply the inspector of taxes of the district in which a deceased person has resided with particulars of such deceased's estate? It may be of benefit to the Exchequer to do this and it enables oversights on the part of a testator in filling up his income tax returns to be remedied, but I was under the impression that the contents of an estate duty affidavit were of a private nature and could only be communicated to third persons with the consent of the personal representatives of a deceased.

Chelmsford. Cæsaromagus.

Caution.

Sir,—We desire, through the medium of your columns, to draw attention to the fact that a man calling himself Alexander Eugene Lawrence is using our name without our authority, and is producing letters purported to be signed by us stating that he is entitled to considerable property. As a matter of fact, we do not act for the man, nor do we even know him. Lawrence has recently been "operating" at Newcastle, but we do not know if he is still there.

Brighton. 25th January. Borlase & Johnson.

Parking Motors and the Law of Trespass.

Sir,—As our letter of the 10th December under this heading has not ended the correspondence in your Journal, and we have also been subjected to further attacks in the popular press, we venture to ask for space for the following further comments as to the law and the facts.

In our letter we suggested that there was technical inaccuracy in your contributor's proposition that a plaintiff suing for damage for trespass in a civil action must prove injury. Your contributor in your issue of the 8th inst. claims that there was not any inaccuracy. In *Ashby* v. *White*, 1 Smith's Leading Cases, 12th ed., at p. 288, Holt, C.J., said: "A man shall have an action against another for riding over his ground, though it do him no damage, for it is an invasion of his property." In *Entick* v. *Carrington*, 19 State Trials, at p. 1066, Lord

Camden, C.J., said: "No man can set his foot upon my ground without my licence, but he is liable to an action, though the damage be nothing: which is proved by every declaration in trespass." In *Neville* v. *London Express Newspaper Ltd.*, 1919, A.C., at p. 379, Lord Finlay, L.C., said: "If a right has been infringed no proof of damage is necessary. The rule applies if trespass is committed to the plaintiff's land." Reference may also be made to "Mayne on Damages," 9th ed., p. 5, and to the following text-books on tort, "Clerk and Lindsell," 7th ed., p. 136; "Addison," 8th ed., p. 45; "Pollock," 12th ed., p. 185; "Laws of England," vol. 27, p. 848.

The attacks upon us in the popular press have centred upon two of the three actions started for the purpose of checking trespasses on the land in question in which sums of 17 and 5 guineas respectively have been paid in respect of costs on settlement of the proceedings. In the first action a writ was issued against a car owner who drove his car on the land, and when requested to remove it to the parking station set apart for the benefit of car owners, refused so to do and alleged that our client had no right to the land. In answer to a letter he claimed that the land was not our client's, that our client could do what he liked and that the Automobile Association would defend any action our client might bring, and he should go there again. He had three separate and distinct opportunities before the writ was issued of avoiding its issue. By the course he pursued he caused the costs to be incurred which in fact exceeded 17 guineas.

In the case of the other action neither the car owner nor his wife personally paid us the 5 guineas. This car owner was invited by us to consult a solicitor, but instead of so doing his wife called at our office accompanied by a gentleman, who told her we were acting "quite well" in dropping the proceedings if the costs were paid. On her pleading inability to pay the costs at once we offered to take the costs by instalments, and immediately on that offer being made the 5 guineas was paid by the gentleman who accompanied this car owner's wife. On the Sunday when this car owner was on the land, owners of cars were openly defying the attendants.

From 100 to 200 cars park on this land, necessitating in August (quite apart from three attendants to regulate them) the employment of an extra inspector and two lads, the cost of whose employment the owners of this and adjoining land had to bear. In 1925 the beach inspector collected, on this and the adjoining land, besides 9 cwt. of broken glass, 1,334 sacks of paper and general litter, an increase of 600 sacks on the previous year.

Whether the attacks made upon us were justified or not your readers will judge, and we much doubt whether with knowledge of the true facts your contributor would have made himself responsible for the paragraph appearing in your issue of the 20th November.

London, S.E.11. E. G. & J. W. Chester.

26th January.

[We are extremely grateful to our correspondents. They have put an entirely new light upon the whole proceedings and more than vindicated their conduct. Further, we entirely agree with their statement of the law applicable to the case. Sir Frederick Pollock ("Pollock on Torts," 12th ed., p. 350) states the law on the point briefly and clearly: "It is likewise immaterial in strictness of law whether there be any actual damage or not."—Ed., *Sol. J.*]

Reviews.

Privy Council Practice. By Norman Bentwich. Second edition, by the Author, assisted by Herbert Bentwich. London: Sweet & Maxwell, Limited, xxxii and 416 pages. 35s. net.

The historian is not likely to turn to a book on practice for historical detail, nor is the practitioner likely to be concerned with the origin of the jurisdiction of the Judicial Committee, unless it has some bearing on the existence or exercise of the jurisdiction at the present day. Much of the historical matter in connexion with the Colonial Courts and the right of appeal from the different parts of the British Empire which appeared in the first edition of Mr. Bentwich's book has been deleted as not being strictly relevant to the practice. The book would be better if the deletion had been more complete. The present writer has not attempted to check the mass of information, but where his own knowledge has enabled him to judge he has found inaccuracies. Thus with the marginal note, "The Dominion of Canada," it is stated (p. 34) that "Canada was formerly a French possession." Only a small part of the Dominion was French, namely the provinces now known as Nova Scotia, New Brunswick and Quebec, and parts of Ontario. Rupert's Land was British from the time of the original grant to the Hudson's Bay Company, and when in 1870 Rupert's Land and the North-West Territories were admitted into the Dominion, they did not become (as stated on p. 35) a province, but, with the exception of the part which became Manitoba, they remained lands under the legislative jurisdiction of the Dominion parliament, outside any province: (see the British North America Act, 1871, 34 & 35 Vict. c. 28). A more serious misstatement appears on p. 46, where the law in force in Quebec is stated to be the English civil and criminal law, introduced by a proclamation in 1763. In so far as it affected Quebec, that proclamation and everything done under it was nullified as from the 1st May, 1775, by the Quebec Act, 1774 (4 Geo. III, c. 83). By s. 7 French civil law, and by s. 11 English criminal law, were established and have so remained until this day.

These, however, are matters which do not affect the practice of the Privy Council. The book deals adequately with all the rules and their interpretation. On p. 39 reference is made to a possible conflict between the Supreme Court of Canada and the Privy Council, but it is difficult to see how it could arise. The case of the High Court in Australia (p. 53) is not parallel. The unfortunate position arising out of *Deakin* v. *Webb*, 1904, 1 C.L.R. 585, and *Webb* v. *Outtrim*, 1907, A.C. 81, depended on there being two rival appellate tribunals, both final, for by s. 74 of the Commonwealth Act, 1900, 63 & 64 Vict. c. 12, the possibility of appeal to the Privy Council, even by special leave, is removed unless the High Court in its discretion grants a certificate. The alternative rights of appeal from Canadian provincial courts to the Privy Council and to the Supreme Court of Canada cannot give rise to a similar difficulty, because the Privy Council may grant special leave to appeal from the Supreme Court. That again, however, is an academic question. On all practical matters the book appears satisfactory in every way. The first edition proved its usefulness and trustworthiness. The second edition, embodying the new rules, is in many ways an improvement, not least in an expanded index. G.

Books Received.

Publications of The Society for Jewish Jurisprudence (English Branch), No. 1, "Divorce in Jewish Law." Samuel Daiches, Ph.D., Barrister-at-Law. (Reprinted from the "Journal of Comparative Legislation," November, 1926.)

Encyclopædia of The Laws of Scotland. Consultative Editor: The Right Hon. The Viscount DUNEDIN, P.C., G.C.V.O. General Editor: JOHN L. WARK, K.C., LL.B., Sheriff of Argyll. Assistant Editor: A. C. BLACK, K.C., LL.B. Vol. II—Assignation to Canon Law. Medium 8vo. pp. xxv and 565. W. Green & Son, Ltd., Edinburgh. 57s. 6d. net.

Minnesota Law Review. Journal of The State Bar Association. Vol. 11, January, 1927. Supplement containing the Report of the Minnesota Crime Commission. 60 cents.

The Bombay Law Journal. Vol. IV, No. 8, January, 1927. The Maneck Printing Press, Arrandhiras, Tribhuran-road, Bombay 4. Rs.1-8.0.

Central Law Journal. Vol. 100, No. 1, January 7th, 1927. St. Louis Mo. 25 cents. W. P. H.

High Court—Chancery Division.

Sabatur v. The Trading Company.

Clauson, J. 9th, 10th, 11th and 17th November, 1926.

COMPANY—WRIT—PRACTICE—SERVICE—FOREIGN CORPORATION—SERVICE ON AGENT IN LONDON—PLACE OF BUSINESS WITHIN THE UNITED KINGDOM—ADMINISTRATIVE WORK DONE IN LONDON—APPLICATION TO SET ASIDE SERVICE—COMPANIES (CONSOLIDATION) ACT, 1908 (8 Edw. 7, c. 69), s. 274.

A foreign company having once established a place of business in the United Kingdom is under duty even if it ceases to carry on business there under s. 274 of the Companies (Consolidation) Act, 1908, to keep upon the register the name and address of a representative in the United Kingdom authorised to accept on the behalf of the company service of process.

Employers' Liability Assurance Corporation v. Sedgwick, Collins & Co., 1927, A.C. 95, *followed.*

Badcock v. Cumberland Gap Park Company, 1893, 1 Ch. 362, *distinguished as to what amounts to carrying on business in this country.*

Action. The plaintiff in this action which was commenced by writ on 30th March, 1926, claimed to be interested as assignee in certain shares in a Russian Company under the profits of the Company. The defendants to the writ were (1) a corporation established under Russian Law, called "the Trading Company"; (2) a partnership firm called "the Trading Company," and (3) V. P. Ampenoff, a Russian subject and a director of the Russian company. The last-mentioned entered appearance to the writ and by arrangement was served with the writ as representing the Russian company, and also as representing either as a partner or as a manager the partnership. The appearance entered to the writ by the Russian company was conditional without prejudice to an application to set aside the service of the writ on Ampenoff as not being a person under s. 274 of the Companies (Consolidation) Act, 1908, to accept service on behalf of the Russian company, and a similar conditional appearance was entered for the Russian partnership without prejudice to an application to set aside the service of the writ upon Ampenoff, upon the ground that he was neither a partner nor manager of, nor agent for, any such partnership firm, and upon the further ground that no such partnership firm existed. On 17th May, 1926, the Russian company took out a summons for an order that the service of the writ upon Ampenoff might be set aside on the ground that he was not the person named under s. 274 of the said Act to accept service on behalf of the Russian company, and that that company had not at any material time any place of business in England, and at the same date the Russian partnership also took out a summons for an order that service of the writ on Ampenoff might be set aside on the grounds that he was neither a partner nor manager of, or agent for, any such partnership, and that no such partnership existed. This last-mentioned summons was by leave of the court amended by making Ampenoff the applicant in place of the Russian partnership to enable the parties to deal with the contention that service ought to be set aside on the ground that the Russian partnership was non-existent. The Russian company was incorporated about 1890 under the laws of the Russian Empire with the object of trading in tea and sugar, and of purchasing the business of a firm named Alexis Groblerne which thereafter ceased to exist. They set up a branch in London, at 33 and 35 Eastcheap, which in 1919 was managed by Ampenoff who had been a director thereof. In June, 1921, Ampenoff, in order to comply with the requirements of the Registrar of Companies made under s. 274, registered the statutes of the company, and himself as a person resident in the United Kingdom authorised under that section to accept on behalf of the company service of process. It was proved that the London branch was closed in April, 1921, business having ceased to be carried on in this country, and in 1923 the Registrar, being satisfied as to this, closed the file. But it was also proved that in 1923 Ampenoff was sending dividends from here to shareholders in Paris on paper headed with the name of the Russian company, and also of its directors. There was no evidence of trading either in Eastcheap or even in Europe.

CLAUSON, J., after stating the facts, said in the course of a considered judgment: I find on the evidence before me that in 1923 Eastcheap was a place where the Russian Company was carrying on the principal part of its business. *Badcock* v. *The Cumberland Gap Park Company, supra,* is distinguishable. There the office was not in any real sense a place where the foreign company was carrying on its business. The legal result of the facts is that the Russian Company, having its place of business within the jurisdiction and Ampenoff's name, at the date of service of the writ, being upon the register, in pursuance of s. 274, as a person authorised to accept process on its behalf, the service of the writ on him is effective service upon the company. The effect of s. 274 is that, once having established a place of business in the United Kingdom, the duty remains with the foreign company, even if it ceases to carry on business there, to keep upon the register the name and address of a representative in the United Kingdom authorised to accept on behalf of the company service of process (see *Sedgwick, Collins & Co.* v. *Russia Insurance Company of Petrograd,* 1926, 1 K.B. 1, affirmed *sub nom. Employers' Liability Assurance Corporation* v. *Sedgwick, Collins & Co.,* 1927, A.C. 95. Therefore, even if the view that at the time when the writ was served the Russian Company had a place of business in Eastcheap is wrong, upon the true construction of the section the service upon Ampenoff is effective service upon the company. The summons by the Russian Company will be dismissed, the costs of each party to be costs in the action. As regards the Russian partnership as a defendant to the action, it is clear upon the evidence that it never existed, and it ought not to have been made a defendant. It appears to have been named as a second defendant *ex abundanti cautela,* but it should be held that the first defendant, the Russian Company, was not an incorporated company but in the nature of a partnership. The summons in the first instance on the part of the Russian partnership, and afterwards by amendment of Ampenoff, will be dismissed, with no order as to costs.

COUNSEL: *Luxmoore,* K.C.; *Dighton Pollock; D. N. Pritt.*

SOLICITORS: *Gilbert Samuel & Co.; Guedella, Jacobson and Spyer.*

[Reported by L. M. MAY, Esq., Barrister-at-Law.]

Forster *v.* **National Amalgamated Union of Shop Assistants, Warehousemen and Clerks.**

Eve, J. 21st January.

TRADE UNION—POWER TO APPLY FUNDS FOR POLITICAL OBJECTS — STATUTORY RESTRICTIONS — RULES — TRADE UNION ACT, 1913, s. 3.

An action was brought to restrain a trade union, of which the plaintiff was a member, from applying general funds for political objects. The action was based on a breach of s. 3 of the Trade Union Act, 1913. At the hearing an application was made for leave to amend the statement of claim by adding a claim for relief based on a breach of the rules of the union.

Held, refusing leave to amend, that the action failed as showing no breach of the provisions of the Act.

This was an action for an injunction to restrain the defendant union from applying directly or indirectly any of the general funds of the union in the furtherance of the political objects to which s. 3 of the Trade Union Act, 1913, applied, and in particular from paying any contributions to the Trades Union Congress so long as that body expended its funds or part thereof in furtherance of political objects. The plaintiff was a member of the defendant union, and he alleged that the union, contrary to law, had applied and would continue to apply, unless restrained by the court, some of its funds indirectly to political objects by means of affiliation fees paid to the Trades Union Congress, which was a political body. The defence was a general denial of the allegations and a submission that the matter was *res judicata*, the Registrar of Friendly Societies having had the matter before him. The action was based on the alleged breach of the provisions of the statute, but at the hearing an application was made to the court for leave to amend the statement of claim by adding an allegation that the payment complained of was a breach of the rules of the union. The Court, however, refused the application.

EVE, J., said the plaintiff's claim was based on the alleged breach of the provisions of s. 3 of the Trade Union Act, 1913, and the first question to be decided was whether the plaintiff had established any such breach. It was admitted that a valid resolution had been passed, and that rules approved by the Registrar of Friendly Societies, providing for the matters referred to in s-s. 1 of s. 3, were at the date of the writ still in force. In these circumstances, all the conditions precedent had been complied with, and in his opinion the statutory restrictions had ceased to operate. He could not accept the view that by the wording of the section any implication was raised that after fulfilling all the conditions mentioned in the section the restrictions still applied as statutory restrictions. On the contrary, it seemed that from that time forward it was a question of the rules and not of the statute. The procedure adopted by the defendant union had been in accord with and not in breach of the Act, and no such cause of action as the plaintiff had advanced was subsisting when the writ was issued. If the facts upon which the plaintiff relied constituted a misapplication of the general funds of the union, his cause of action was a breach of the rules, but the question was whether even assuming that the action had been brought on the footing that there had been a breach of the rules, it could have been maintained. He very much doubted whether the plaintiff, having failed to convince the Registrar, could commence an action in connexion with the same matters, exposing the union to further litigation. The relief sought in this action was founded on an alleged breach of the Act, and no such breach having been established, the action must be dismissed with costs.

COUNSEL: *Montgomery*, K.C., *Manning*, K.C., *Swords* and *W. H. Williams*; *Wilfrid Greene*, K.C., *Sir Henry Slesser*, K.C., *J. H. Stamp* and *Arthur Henderson*.

SOLICITORS: *Rhys Roberts & Co.*, for *Horace A. Davies*, Cardiff; *Shaen, Roscoe, Massey & Co.*

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

High Court—King's Bench Division

Behnke *v.* **Bede Shipping Co., Ltd.**

Wright, J. 14th and 18th January.

CONTRACT — WHETHER DEFINITE — SALE OF STEAMER — SPECIFIC PERFORMANCE—INJUNCTION—DAMAGES—SHIP A CHATTEL WITHIN SALE OF GOODS ACT—SALE OF GOODS ACT, 1893 (56 & 57 Vict., c. 71), ss. 4, 52.

Where a contract for the sale of a steamer was found to be enforceable it was held that specific performance of the contract could be decreed, and that a ship was a chattel which came within the provisions of ss. 4 and 52 of the Sale of Goods Act, 1893.

This was an action in which the plaintiff, Mr. Behnke, a German, claimed specific performance of an alleged contract made with the defendants for the sale of a British steamer called the "City." He also claimed an injunction restraining the defendants from disposing of the vessel to anyone but himself, and in the alternative damages for breach of contract. The defendant company was managed by Messrs. Frew, Elder and Co., who notified various shipbrokers, including the firm of Sloan & Jackson, that the "City" was for sale. This vessel was built in 1892, but new boilers and machinery had been installed in 1921. Messrs. Sloan & Jackson brought the "City" to the notice of the plaintiff, who required such a vessel, which, though not expensive, would, by reason of her new machinery, pass the German classification authorities. The subsequent correspondence between the parties was such that the plaintiff contended that a definite contract to sell had been entered into. Messrs. Frew & Elder denied that there was a binding contract and sold the steamer to other purchasers at a higher price than that offered by the plaintiff. Counsel for the plaintiff stated that the case raised three questions: (1) Did the negotiations result in a definite contract? (2) If so, could specific performance of it be decreed? and (3) did a ship come within the provisions of s. 4 and s. 52 of the Sale of Goods Act? On the point of whether a ship was within the Act he referred to "Chalmers on the Sale of Goods Act" (10th ed., p. 150), he also referred to "Fry on Specific Performance" (6th ed., p. 36), and "Halsbury's Laws of England" (vol. xxvii, p. 14), and to the following cases: *Claringbould* v. *Curtis*, 21 L.J., Ch. 541; *Hart* v. *Herwig*, L.R. 8 Ch. 860; *Jones* v. *Tankerville*, 1909, 2 Ch. 440; and *re Wait*, 1926, Ch. 962. Counsel for the defendant, after dealing in detail with the documents of the case, submitted that there was no contract; that Mr. Sloan was not employed by the defendants as their agent, but acted as an intermediary on a commission basis. He further contended that even if a contract was found, the case would still be one for damages and not specific performance; so far as he could ascertain, specific performance of the sale of a completed ship had never before been ordered. He also submitted that if there was a contract it provided for certain repairs to be effected to the satisfaction of Lloyd's surveyor, and in such matters the court would never order specific performance. Specific performance was given by s. 52 only where the seller wished to retain the goods for himself. Counsel for the plaintiff, in reply, submitted that the correspondence constituted a sufficient note or memorandum in writing of a concluded contract to satisfy s. 4 of the Sale of Goods Act. There was no authority to show that a complete ship came within the Sale of Goods Act.

WRIGHT, J., reading a reserved judgment, dealt fully with the correspondence and conversations, and held that a definite contract had been entered into. He thought that the *pro forma* contract of the defendants, or the letter in terms referring to it as their offer, or both, constituted an offer in writing which, if accepted either orally or in writing, would constitute a written note or memorandum. With regard to the point whether a ship comes within the description of a chattel subject to the provisions of the Sale of Goods Act, he referred

to the case of *In re Blyth Shipbuilding Company*, 1926, 1 Ch. 494, in which Romer, J., held that a contract for the building of a ship was a contract for the sale of goods within the Act, and he (Wright, J.), held that s. 4 of the Act applied in this case. He also held that the payment of the deposit was not a part payment within the section, and that the brokers received it as stakeholders and not as agents. On the question whether specific performance of a contract for the sale of a ship could be ordered, his lordship referred to "Fry on Specific Performance," p. 37, note 4, where it is stated that a ship is probably within the general principle, and to the cases of *Claringbould* v. *Curtis*, 21 L.J. Ch. 541, and *Hart* v. *Hertwig*, L.R. 8 Ch. 860. He also emphasised the peculiar value of the "City" to the plaintiff, and held that he was entitled to the ship and to a decree of specific performance. Judgment was given that the contract be specifically performed; with an injunction as prayed, and costs.

COUNSEL: For the plaintiff, *G. Langton*, K.C., and *K. S. Carpmael*; for the defendants, *A. T. Miller*, K.C., and *Sir Robert Aske*.

SOLICITORS: *Stokes & Stokes*, for *Bramwell, Clayton and Clayton*, Newcastle-on-Tyne; *Botterell & Roche*, for *Botterell, Roche & Temperley*, Newcastle-on-Tyne.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Societies.

Gray's Inn.

Friday, the 21st inst., being the Grand Day of Hilary Term at Gray's Inn, the Treasurer (Master The Right Hon. Lord Merrivale) and the Masters of the Bench entertained at dinner the following guests:

The Most Hon. The Marquis of Reading, G.C.B., G.C.V.O., G.C.S.I., G.C.I.E.; The Right Hon. Viscount Haldane of Cloan, K.T., O.M.; The Right Hon. Viscount Davenport; The Right Hon. Lord Clinton; The Right Hon. Reginald McKenna; The Right Hon. Sir John Simon, K.C.V.O., K.C., M.P.; The Right Hon. H. A. L. Fisher, F.R.S.; The Right Hon. J. Ramsay MacDonald, M.P.; The Right Hon. H. P. Macmillan, K.C.; The Hon. Mr. Justice Hill; Mr. Stuart Bevan, K.C.; Mr. R. F. Bayford, K.C.; Mr. E. S. Roscoe.

The Benchers present in addition to the Treasurer were: The Right Hon. Sir Plunket Barton, Bart., K.C.; Mr. Herbert F. Manisty, K.C.; Mr. Arthur Gill; Sir Montagu Sharpe, K.C.; His Excellency Timothy Healy, K.C.; Sir Alexander Wood Renton, K.C.M.G., K.C.; Mr. W. Clarke Hall; The Right Hon. Sir Hamar Greenwood, Bart., K.C., M.P.; Vice-Chancellor Courthope Wilson, K.C.; Mr. G. D. Keogh; Mr. J. W. Ross-Brown, K.C.; Mr. James Whitehead, K.C.; Mr. Frederick Hinde; with the Chaplain, The Rev. W. R. Matthews, D.D., and the Under-Treasurer, Mr. D. W. Douthwaite.

United Law Society.

A meeting of the Society was held on Monday, 24th inst., in the Middle Temple Common Room, Mr. L. F. Stemp in the chair. Mr. F. B. Guedalla opened "That in the opinion of this House the effect of 'Prohibition' in England could only be beneficial and to the good of the nation." Mr. J. Finlaison opposed. There also spoke Messrs. T. Hynes, H. Shanly, G. Ramsey, G. B. Burke, T. Jameson and S. Ashley. The opener having replied, the motion was put to the House but was lost by two votes.

Society for Jewish Jurisprudence.

ENGLISH BRANCH.

The next ordinary meeting of the Society will be held on Monday, 31st inst., at Lecture Room A, King's Bench Walk, Inner Temple (adjoining the library), when a paper will be read by Mr. Geo. J. Webber, LL.B., Barrister-at-Law, on "Ownership in Jewish Law." The hon. president, Mr. A. M. Langdon, K.C., will take the chair at five o'clock precisely.

Further copies of No. 1 of the Society's publications, "Divorce in Jewish Law," may be obtained by members on application to the hon. secretary, Mr. J. S. Hockman, Fountain Court, Temple.

Legal Notes and News.

Appointments.

The King has approved the appointment of Mr. JAMES ADDISON, I.C.S., and Mr. BAKSHI TEK CHAND to be Puisne Judges of the High Court of Judicature at Lahore.

Mr. TREVOR JONES, solicitor, who has for some time been associated with the well-known firm of Messrs. Wilkinson, Howlett & Co., of 14, Church Street, Kingston-on-Thames, and 14, Bedford Street, Covent Garden, W.C.2, has been appointed Assistant Solicitor to the Rhondda Urban District Council. Mr. Jones was admitted in 1925.

Mr. J. W. SIMPSON, clerk to the Trowbridge Urban District Council, has been appointed Town Clerk of Thornaby-on-Tees.

Resignations.

Mr. J. S. MOSS-BLUNDELL, J.P., solicitor, has tendered his resignation of the office of Clerk to the Cottingham Urban District Council, which will take effect on 30th June next, when he will have completed fifty years service, having been appointed by the Local Board in 1877. He also held the office of Solicitor to the Hull and Barnsley Railway Company from 1884 until its amalgamation with the London and North Eastern Railway Company in 1922. Mr. Moss-Blundell, who was made a Justice of the Peace for the East Riding of Yorkshire in 1907, is in his eightieth year.

MOOTS AT GRAY'S INN.

FISH POISONING AT A RESTAURANT.

Sir John Simon, K.C., presided at a moot held in Gray's Inn Hall, on Monday night in last week. There were also present:—

The Master of the Moots, Sir Dunbar Plunket Barton, K.C. Lord Merrivale, Master Whitehead, Master Ross-Brown, Master Dummett, Master Campion, Master Keogh, and Master Hinde.

The following question was argued:—

A restaurant of the first class is in the habit of getting its supplies of fish from Messrs. X, reputable fish salesmen. A consignment of Messrs. X's fish reaches the restaurant just in time to be cooked for that day's dinner, and three distinguished patrons of the restaurant, the Baron de Beef, Lord Mutton, and Lady Hearty, partake of it and are poisoned thereby. Lady Hearty dies on the spot; the Baron de Beef takes to his bed and dies next day, leaving a widow and children unprovided for; Lord Mutton, after a long, painful and expensive illness, recovers. Three writs for damages are issued against the restaurant company (1) by Lady Hearty's executors for breach of contract to supply eatable food; (2) by the Baron de Beef's executors under Lord Campbell's Act; and (3) by Lord Mutton for negligence. The restaurant company, fearing that its custom would suffer if the actions were tried in public, compromises under eminent advice by paying £5,000 in each action and thereupon sues Messrs. X on a breach of warranty for £15,000. The judge enters judgment for the defendants and the restaurant company appeals.

In delivering judgment, Sir John Simon said that it could not be seriously disputed that there was a contract for the sale of fish between Messrs. X and the restaurant. The restaurant relied upon the skill and judgment of Messrs. X to select and sell good fish, in accordance with s. 14 of the Sale of Goods Act. Messrs. X had in fact sold bad and poisonous fish and had thus been guilty of a breach of their contract with the restaurant. What, then, must the damages be? Admitting that the restaurant could recover the price paid for the bad fish and the price of the materials used in preparing it for the table, could they, in addition, recover from Messrs. X damages for their loss of reputation and custom? The general rule was that where a contract was established and a breach occurred, the plaintiff complaining of the breach was entitled to judgment, though his damages might be but nominal. The damages in the present case must primarily be assessed by considering the claims of Lady Hearty, the Baron de Beef, and Lord Mutton respectively. The estate of the first was diminished by the price which she had to pay for the bad fish, the second would only recover upon proof of negligence on the part of the restaurant—for Lord Campbell's Act had nothing to do with breach of contract, and to recover under it a person must have been injured by a tort—and the same applied to the third. Since there was some evidence to sustain an action for breach of contract, and since the possibility of the restaurant's recovering damages for its loss of reputation should not be excluded, the restaurant was

justified in paying compensation to its deceased and injured patrons, and the restaurant could therefore recover damages from Messrs. X, the fishmongers, even though no notice of the settlement had been given to Messrs. X.

The appeal, therefore, succeeded, and a new trial would be ordered.

"Counsel" were, for the appellants, Mr. Montrose and Mr. Cohen; and for the respondents, Mr. Miller and Mr. Moules.

Employer's Liability for Servant's Torts.

At a Moot held on Monday last in Gray's Inn Hall the Treasurer (Lord Merrivale) presided, in the absence of Lord Justice Scrutton, who was prevented by illness. Sir D. Plunket-Barton, K.C., Master of the Moots, and Masters Manisty, Clayton, Campion, Keogh, and Hinde were also present. The following question was argued —

Jones, the chauffeur of Mr. Devereux, when off duty in the evening, is walking from his lodgings to the theatre past his employer's house. He hears cries of "Stop thief! Help!" and sees a struggle going on between two men near an open window in his employer's house. He thinks rightly that there has been an attempted burglary, and runs to the struggle. Each man struggling calls to him, "Hold him!" Jones tackles the burglar, as he thinks, so vigorously as to hurt him seriously. The other man goes off "to fetch the police." Unfortunately, Jones has tackled the wrong man, Robinson, who sues Mr. Devereux for damage done by his servant in the course of his employment. A judge trying the case without a jury finds for Mr. Devereux. Robinson appeals.

"Counsel" for the appellant were Major Cloutman, V.C., and Mr. Lawrence, and for the respondent Mr. Foster-Sutton and Mr. Brace.

In giving judgment, Lord Merrivale said that the Court of Appeal had held (*Poland* v. *Parr & Sons*, 1926, 1 K.B., 236) that a servant was in general authorised to do acts for the protection of his master's property, and that therefore an employer would be liable for a tort committed by a servant in protecting the employer's goods. But in the present case, no burglary had actually been committed, and the attempt had ceased by the time of the chauffeur's interference. The chauffeur could not therefore be said to be protecting his employer's property, which was no longer in danger; his employment gave him no authority to vindicate justice and effect an arrest, and his master could not be held liable for actions directed to those ends. The appeal therefore failed and would be dismissed with costs.

MOOT AT THE INNER TEMPLE.

Case of Undefamatory Libel.

Lord Darling presided at a moot held after dinner in the hall of the Inner Temple on the 24th inst. The following appeal was argued :—

Mrs. X, of Kensington, is a lady of very modest means and retiring disposition. The *Fulton's Gazette*, in a "personal column," on false information from a disappointed relative, described her as "a rich and benevolent gentlewoman whose purse is ever ready to open at the call of the necessitous." As a result Mrs. X receives a deluge of letters, hundreds of callers, and the condolences of her circle of friends. In consequence of the extra work so entailed her one maidservant gives her notice, and she is without a maid for several weeks. She then sues the *Gazette* for libel and in "case" for the damage she has sustained by the publication of the false words. No actual pecuniary loss is proved at the trial, but the jury find that the words published were false and calculated to produce and did produce the trouble from which the plaintiff suffered. Mrs. X recovers a verdict and judgment for £100.

The *Gazette* appeals.

The case for the appellant was argued by Mr. S. R. Sidebottom (barrister), and Mr. H. Hylton-Foster (student); and for the respondent by Mr. H. M. Pratt (barrister) and Mr. J. F. Henderson (student).

Lord Darling, giving judgment, held that the damage sustained was in law the natural and probable consequence of the publication of the libel, and that the finding of the jury on this point could therefore be sustained. The publication was clearly malicious as the publication was without just cause or excuse. The damage was a "temporal" loss which could be assessable in money and had been properly assessed by the jury. Therefore the appeal must be dismissed—and that though the cause of action for libel failed as the language was not and could not be held to be defamatory.

The following Masters of the Bench attended the Moot :—

Lord Desart, Mr. G. Spencer Bower, K.C., Mr. A. Langdon, K.C., Sir Travers Humphreys, Mr. G. F. L. Mortimer, K.C., and Sir Albert Gray, K.C.

UNNECESSARY DOCUMENTS IN INDIAN RECORDS.

Lord Phillimore, in delivering judgment at the Privy Council on Friday, the 21st inst., in an appeal from Bengal, made the following observations :—

"But their lordships have not concluded all that they have to say in the matter. A very large and cumbrous record has been produced, and put before their lordships, containing, amongst other things, a mass of accounts which were obviously immaterial after the High Court had said that the parties had agreed the accounts between them and had agreed what was due to the plaintiff as a creditor.

"The solicitor acting here for the Indian appellant had notice in a letter sent to him by the Registrar of the 3rd November that 'attention would be drawn to the record in this case which contains a large quantity of matter which should not be included and which, as at present advised, should the appellant succeed, I shall not be prepared to allow on taxation.'

"Their lordships asked Mr. Narasimham what he could say about this subject. He pointed out that in Calcutta it was very difficult, if one party contended that the documents should be printed and made part of the record in the case for the other party to resist it. As to that their lordships are not in agreement. They have the advantage of the assistance of Sir Lancelot Sanderson, who has just returned from India, and they understand that the practice, at any rate in Bengal, and this case comes from Bengal, is well settled. If one party thinks a document should be printed and the other party thinks it unnecessary, a reference is made to the Registrar of the High Court, who determines, at any rate in the first instance, what should be done.

"Their lordships have no reason to suppose that the respondent did desire that these accounts should be made part of the record, but if he did the appellant should not have rested content, but should have gone to the Registrar and got a decision as to the usefulness or otherwise of this mass of accounts.

"That is so far as the solicitors in India are concerned. In their Lordships' opinion, if the appellant had succeeded, all these costs would have been disallowed for the reasons given.

"But there is another matter on which their lordships have called for the attendance of the solicitor for the appellant here. It does not follow that, because unnecessary documents have been printed in India, they should be included in the books bound up for their lordships. It is the duty of the solicitor in this country to make a selection of the necessary documents. The other papers should be ready at hand in case they should be required. In cases of doubt the solicitor should take the advice of counsel on this point, for which purpose, on application being made, a fee will be allowed.

"Their lordships have intimated the same opinion on other occasions. They have thought it necessary to require the attendance of the solicitor in order to make it quite clear that drastic action will be taken if more care is not used in this matter."

BRITISH INTERESTS IN BERLIN COMPANY.

An interesting point in international law was raised during the hearing of a claim before the Anglo-German Mixed Arbitral Tribunal (Second Division), sitting in London on Thursday, 20th inst., when the Berliner Verlag G.m.b.H., a German company, sued the Rembrandt Intaglio Printing Company, Limited, for the amount of certain calls made during the war upon shares not fully paid up which were held in that company by the English debtors.

It appeared that after the outbreak of war two German shareholders who held a small proportion of the shares caused representatives to be appointed to look after the interests of the foreign shareholders in the company, these being the debtor company, another English company, and a French company. This proceeding was taken under a German Government Decree, a general meeting being then called, at which the German shareholders and the representatives appointed to look after the foreign shareholders' interests decided to make a call for the balance due on all shares not fully paid up. The existence of a state of war prevented such calls being paid by the enemy shareholders, and the shares were declared forfeited accordingly. Under German law these shares were offered at public auction and purchased by one of the German shareholders, who was the manager of the business.

Mr. H. G. Robertson, counsel for the debtors, said the shares had been knocked down at a very low figure, and he submitted that the whole proceeding, involving the appointment of representatives to protect the interests of the foreign shareholders and the consequent sale of the shares by public auction, was designed to oust the debtors from their membership of the company. Judgment was reserved.

"TRESPASS" BY MOTOR CAR.

At the Westminster County Court on Thursday, the 20th inst., Mr. Francesco Antonio Mazzina, of New Oxford-street, W.C., sued Mr. Alfred Spicer, accountant, of Wellington-gardens, Barking, claiming £43 0s. 6d., for damages to his shop, done by the defendant's motor car, at 5.30 a.m., on 5th August last. It was put forward in the claim that the car had "unlawfully broken and entered" the shop, while an alternative allegation was that the damage was due to negligent driving resulting in trespass and damage.

Evidence was given that the defendant and a friend, who had been to a party at Kilburn, were returning home on the morning in question when the car was turned to pass a van, skidded in the middle of the road, which was wet from cleaning with a hose, and went into the shop front. The plaintiff, who was sleeping over the shop, was awakened by the crash, and came down to find the place wrecked.

Judge Reeves said he did not think that the onus of proof had been discharged by the plaintiff, and, having regard to the evidence, decided that negligence had not been established. The defendant was entirely blameless, and though he would have liked to find that the plaintiff was entitled to some compensation, he was satisfied that the defendant was not guilty of any negligence, and, therefore, must dismiss the action with costs.

POSTCARD CHEQUES.

Obstacles Raised by Postal Authorities.

A new scheme for having cheque forms printed on post-cards in order that time, trouble and expense may be saved in sending them through the post has been devised by Mr. M. W. Biggs, of Clifford's-inn, but it cannot be put into operation under the present Post Office regulations.

The idea of Mr. Biggs is to save the envelope, the trouble of writing out the cheque, addressing the envelope and sticking it down, and one penny, or at least one halfpenny, on the postage. After negotiations with bank representatives, he designed a card on which is printed a date line, the name of the bank on which the cheque is to be drawn, and the instruction: "Pay to the addressee of this card or order . . ." It was intended that the drawer should fill in the date, the amount and the signature, stick a twopenny stamp for the cheque duty, and post it as an ordinary post-card.

It was believed by Mr. Biggs that if the handwriting on the cheque did not amount to more than five words the card would be accepted by the Post Office at the printed paper rate of one halfpenny, but he was satisfied that at all events the cheque post-card would be delivered for one penny. Inquiries at the Post Office yesterday made it quite certain that no such card can be delivered for one halfpenny, and that if the cheque is uncrossed it cannot be accepted at one penny. On the former point the Post Office Guide was quoted by an official. This says definitely that "no paper money may be posted or conveyed or delivered by post in a printed paper," and cheques are included in the definition of paper money.

On the second head it was pointed out that an open cheque would probably be liable for compulsory registration at a cost of threepence. The rule covering this provides that any packet found to contain "a cheque or dividend warrant not crossed, or made payable to order," of a value of 10s. or over will be subject to registration.

Court Papers.

Supreme Court of Judicature.

Rota of Registrars in Attendance on

Date.	Emergency Rota.	Appeal Court No. 1.	Mr. Justice Eve.	Mr. Justice Romer.
Monday Jan. 31	Mr. Ritchie	Mr. More	Mr. More	Mr. Jolly
Tuesday Feb. 1	Synge	Jolly	Jolly	More
Wednesday . 2	Hicks Beach	Ritchie	More	Jolly
Thursday .. 3	Bloxam	Synge	Jolly	More
Friday 4	More	Hicks Beach	More	Jolly
Saturday ... 5	Jolly	Bloxam	Jolly	More

Date.	Mr. Justice Astbury.	Mr. Justice Clauson.	Mr. Justice Russell.	Mr. Justice Tomlin.
Monday Jan. 31	Mr. Bloxam	Mr. Hicks Beach	Mr. Ritchie	Mr. Synge
Tuesday Feb. 1	Hicks Beach	Bloxam	Synge	Ritchie
Wednesday . 2	Bloxam	Hicks Beach	Ritchie	Synge
Thursday .. 3	Hicks Beach	Bloxam	Synge	Ritchie
Friday 4	Bloxam	Hicks Beach	Ritchie	Synge
Saturday ... 5	Hicks Beach	Bloxam	Synge	Ritchie

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 5%. Next London Stock Exchange Settlement, Thursday, 10th February, 1927.

	Middle Price 26th Jan.	Interest Yield.	Yield with Redemption.
English Government Securities.		£ s. d.	£ s. d.
Consols 2½%	55⅝	4 10 0	—
War Loan 5% 1929-47	101 1/32	4 19 0	4 19 0
War Loan 4½% 1925-45	96½	4 13 6	4 17 0
War Loan 4% (Tax free) 1929-42 ..	101⅛	3 19 0	3 17 0
War Loan 3½% 1st March 1928 ..	99 7/8	3 10 0	4 14 6
Funding 4% Loan 1960-90	87	4 12 0	4 13 6
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years ..	93½	4 6 0	4 9 6
Conversion 4½% Loan 1940-44 ..	96½	4 13 6	4 16 0
Conversion 3½% Loan 1961	76 3/16	4 12 0	—
Local Loans 3% Stock 1921 or after ..	63⅛	4 14 0	—
Bank Stock	252	4 15 0	—
India 4½% 1950-55	92	4 17 6	5 0 6
India 3½%	70½	4 19 0	—
India 3%	59½	5 1 0	—
Sudan 4½% 1939-73	94	4 16 0	4 19 0
Sudan 4% 1974	84¼	4 15 0	4 18 0
Transvaal Government 3% Guaranteed 1923-53 (Estimated life 19 years) ..	81¼	3 14 0	4 12 0
Colonial Securities.			
Canada 3% 1938	83½	3 11 6	4 18 0
Cape of Good Hope 4% 1916-36 ..	92½	4 7 0	5 1 0
Cape of Good Hope 3½% 1929-49 ..	79½	4 8 6	5 1 0
Commonwealth of Australia 5% 1945-75	99⅜	5 0 0	5 1 6
Gold Coast 4½% 1956	94½	4 15 6	4 17 6
Jamaica 4½% 1941-71	91⅜	4 18 0	5 0 0
Natal 4% 1937	93	4 6 0	4 18 6
New South Wales 4½% 1935-45 ..	87½	5 3 0	5 11 6
New South Wales 5% 1945-65	95⅜	5 4 6	5 6 0
New Zealand 4½% 1945	96½	4 13 6	4 18 0
New Zealand 4% 1929	98½	4 1 6	5 1 0
Queensland 5% 1940-60	98½	5 1 6	5 3 0
South Africa 5% 1945-75	101½	4 19 0	4 19 6
S. Australia 5% 1945-75	100	5 0 0	5 1 6
Tasmania 5% 1932-42	98⅜	5 1 0	5 2 6
Victoria 5% 1945-75	99½	5 1 0	5 2 0
W. Australia 5% 1945-75	99½	5 0 6	5 2 0
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corpn.	62	4 17 0	—
Birmingham 5% 1946-56	103½	4 16 6	4 17 0
Cardiff 5% 1945-65	101½	4 19 0	4 19 6
Croydon 3% 1940-60	67½	4 9 0	5 2 0
Hull 3½% 1925-55	75	4 13 0	5 1 0
Liverpool 3½% on or after 1942 at option of Corpn.	73¼	4 15 6	—
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	53½	4 14 0	—
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	63¾	4 14 0	—
Manchester 3% on or after 1941 ..	62	4 17 0	—
Metropolitan Water Board 3% 'A' 1963-2003	64¼	4 13 6	4 16 0
Metropolitan Water Board 3% 'B' 1934-2003	66	4 11 0	4 14 6
Middlesex C. C. 3½% 1927-47	81¼	4 6 0	4 18 0
Newcastle 3½% irredeemable	71¼	4 18 6	—
Nottingham 3% irredeemable	61¾	4 17 6	—
Stockton 5% 1946-66	100½	4 19 6	4 19 6
Wolverhampton 5% 1946-56	101½	4 18 6	4 19 0
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture ..	82½xd	4 17 0	—
Gt. Western Rly. 5% Rent Charge ..	100xd	5 0 0	—
Gt. Western Rly. 5% Preference ..	97½	5 2 6	—
L. North Eastern Rly. 4% Debenture	77	5 4 0	—
L. North Eastern Rly. 4% Guaranteed	76	5 4 6	—
L. North Eastern Rly. 4% 1st Preference	67	5 19 0	—
L. Mid. & Scot. Rly. 4% Debenture ..	81	4 19 0	—
L. Mid. & Scot. Rly. 4% Guaranteed ..	80¼	5 0 0	—
L. Mid. & Scot. Rly. 4% Preference ..	77	5 4 0	—
Southern Railway 4% Debenture ..	82	4 17 6	—
Southern Railway 5% Guaranteed ..	100½	4 19 6	—
Southern Railway 5% Preference ..	97½	5 2 6	—